

UNITED STATES OF AMERICA
before the
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Corporation	Docket No. RR06-1-004
Delegation Agreement Between the North American Electric Reliability Corporation and Texas Regional Entity, a division of ERCOT	Docket No. RR07-1-000
Delegation Agreement Between the North American Electric Reliability Corporation and Midwest Reliability Organization	Docket No. RR07-2-000
Delegation Agreement Between the North American Electric Reliability Corporation and Northeast Power Coordinating Council, Inc.	Docket No. RR07-3-000
Delegation Agreement Between the North American Electric Reliability Corporation and Reliability <i>First</i> Corporation	Docket No. RR07-4-000
Delegation Agreement Between the North American Electric Reliability Corporation and SERC Reliability Corporation	Docket No. RR07-5-000
Delegation Agreement Between the North American Electric Reliability Corporation and Southwest Power Pool, Inc.	Docket No. RR07-6-000
Delegation Agreement Between the North American Electric Reliability Corporation and Western Electricity Coordinating Council	Docket No. RR07-7-000
Delegation Agreement Between the North American Electric Reliability Corporation and Florida Reliability Coordinating Council.	Docket No. RR07-8-000
North American Electric Reliability Corporation	Docket No. RR06-3-000

**COMPLIANCE FILING OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
IN RESPONSE TO APRIL 19, 2007 ORDER**

October 30, 2007

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Attachment 1 – Amended and Restated *Pro Forma* Delegation Agreement (**Attachments 1A and 1B** – clean and redlined versions)

Attachment 2 – Revised Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC ROP (**Attachments 2A and 2B** – clean and redlined versions)

Attachment 3 – Amendments to Sections 403, 409 and 1503 of the NERC Rules of Procedure (**Attachments 3A and 3B** – clean and redlined versions of the NERC ROP)

Attachment 4 – Amended and Restated Delegation Agreement between NERC and Florida Reliability Coordinating Council – clean and redlined versions – and supporting documents

Attachment 5 – Amended and Restated Delegation Agreement between NERC and Midwest Reliability Organization – clean and redlined versions – and supporting documents

Attachment 6 – Amended and Restated Delegation Agreement between NERC and Northeast Power Coordinating Council, Inc. – clean and redlined versions – and supporting documents

Attachment 7 – Amended and Restated Delegation Agreement between NERC and Reliability *First* Corporation – clean and redlined versions – and supporting documents

Attachment 8 – Amended and Restated Delegation Agreement between NERC and SERC Reliability Corporation (“SERC”) – clean and redlined versions – and supporting documents

Attachment 9 – Amended and Restated Delegation Agreement between NERC and Southwest Power Pool, Inc. – clean and redlined versions – and supporting documents

Attachment 10 – Amended and Restated Delegation Agreement between NERC and Texas Regional Entity, a division of the Electric Reliability Council of Texas – clean and redlined versions – and supporting documents

Attachment 11 – Amended and Restated Delegation Agreement between NERC and Western Electricity Coordinating Council – clean and redlined versions – and supporting documents

I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”) hereby submits its compliance filing in response to the Commission’s April 19 Order in Docket Nos. RR06-1-004, RR07-1-000 through RR07-1-008, and RR06-3-000.¹ NERC is submitting with this filing an Amended and Restated *Pro Forma* Delegation Agreement with Regional Entities, a revised NERC Compliance Monitoring and Enforcement Program² (“CMEP”), Amended and Restated Delegation Agreements with each of the eight Regional Entities, and certain other revisions to the NERC Rules of Procedure, in compliance with the directives in the April 19 Order. Specifically, NERC is submitting the following documents:^{3,4}

¹North American Electric Reliability Council and North American Electric Reliability Corporation, Docket No. RR06-1-004; Delegation Agreements Between the North American Electric Reliability Corporation and Texas Regional Entity, a division of ERCOT, Midwest Reliability Organization, Northeast Power Coordinating Council: Cross Border Regional Entity, Inc., ReliabilityFirst Corporation, SERC Reliability Corporation, Southwest Power Pool, Inc., Western Electricity Coordinating Council, and Florida Reliability Coordinating Council, Docket Nos. RR07-1-000, RR07-2-000, RR07-3-000, RR07-4-000, RR07-5-000, RR07-6-007, RR07-7-000, and RR07-8-000, respectively; and North American Electric Reliability Corporation, Docket No. RR06-3-000, 119 FERC ¶61,060 (2007) (“April 19 Order”).

²The CMEP is Attachment 4C to the NERC Rules of Procedure (“ROP”).

³The redlined versions of the Amended and Restated *Pro Forma* Delegation Agreement and the revised CMEP are against the versions of these documents that were filed with the Commission on November 29, 2006, and were the subject of the April 19 Order. The redlined versions of the individual amended and restated delegation agreements are against the executed delegation agreements filed with the Commission on May 18, 2007, in response to the April 19 Order.

⁴Many of the delegation agreements and exhibits thereto included in the Attachments are labeled “October 16, 2007” or contain references to the “October 16, 2007 compliance filing. The *pro forma* documents were distributed to the Regional Entities for their use in assembling their individual attachments in late September 2007, at which time the due date for this filing was October 16, 2007. Subsequently, NERC requested and the Commission granted an extension to October 30, so that the proposed filing could be considered by the NERC Board at its October 23 meeting. Due to the logistics of collecting documents from the Regional Entities and assembling this filing, it was not feasible to change all the “October 16” references to “October 30.”

- Amended and Restated *Pro Forma* Delegation Agreement (**Attachments 1A and 1B** – clean and redlined versions).
- Revised Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC ROP⁵ (**Attachments 2A and 2B** – clean and redlined versions).
- Amendments to Sections 403, 409 and 1503 of the NERC Rules of Procedure (**Attachments 3A and 3B** – clean and redlined versions of the NERC ROP).
- Amended and Restated Delegation Agreement between NERC and Florida Reliability Coordinating Council (“FRCC”) – clean and redlined versions – and supporting documents, including redlined versions of FRCC’s Bylaws and Regional Reliability Standard Development Procedure and a redlined version of the FRCC CMEP against the revised uniform CMEP (**Attachment 4**).
- Amended and Restated Delegation Agreement between NERC and Midwest Reliability Organization (“MRO”) – clean and redlined versions – and supporting documents, including redlined versions of MRO’s Bylaws and Regional Reliability Standards Process Manual (**Attachment 5**).
- Amended and Restated Delegation Agreement between NERC and Northeast Power Coordinating Council, Inc. (“NPCC”)⁶ – clean and redlined versions – and supporting documents, including redlined versions of NPCC’s Bylaws and Regional Reliability Standards Development Procedure (**Attachment 6**).
- Amended and Restated Delegation Agreement between NERC and ReliabilityFirst Corporation (“ReliabilityFirst”) – clean and redlined versions – and supporting documents, including redlined versions of ReliabilityFirst’s Bylaws and Regional Standard Development Procedure and a redlined version of the ReliabilityFirst Hearing Procedure against the revised uniform Hearing Procedure (**Attachment 7**).

⁵As discussed in §III.B below, the revised CMEP includes a completely revised Attachment 2, Hearing Procedures. Because the Hearing Procedures have been completely revised, a redline against the prior version would not provide meaningful information and therefore is not included.

⁶NERC originally entered into, and filed with the Commission, a delegation agreement with the Northeast Power Coordinating Council: Cross Border Regional Entity, Inc. (“NPCC: CBRE”). NERC’s executed delegation agreement with NPCC: CBRE was filed with the Commission on May 18, 2007 in Docket No. RR07-3-000. Effective August 1, 2007, the NPCC: CBRE was merged into NPCC, with NPCC the surviving entity. On August 21, 2007, NERC filed with the Commission a “Request for Approval of Amended and Restated Bylaws of Northeast Power Coordinating Council, Inc. and for Substitution of Northeast Power Coordinating Council, Inc. as Regional Entity.” (Docket RR07-15-000.)

- Amended and Restated Delegation Agreement between NERC and SERC Reliability Corporation (“SERC”) – clean and redlined versions – and supporting documents, including redlined versions of SERC’s Bylaws and Regional Reliability Standard Development Procedure (**Attachment 8**).
- Amended and Restated Delegation Agreement between NERC and Southwest Power Pool, Inc. (“SPP”) – clean and redlined versions – and supporting documents, including redlined versions of SPP’s Bylaws and Regional Reliability Standard Development Procedure (**Attachment 9**).
- Amended and Restated Delegation Agreement between NERC and Texas Regional Entity (“Texas RE”), a division of the Electric Reliability Council of Texas (“ERCOT”) – clean and redlined versions – and supporting documents, including a redlined version of the ERCOT Bylaws and a redlined version of the Texas RE Hearing Procedures against the revised uniform Hearing Procedures (**Attachment 10**).
- Amended and Restated Delegation Agreement between NERC and Western Electricity Coordinating Council (“WECC”) – clean and redlined versions – and supporting documents, including redlined versions of the WECC Delegation Agreement and CMEP against the Amended and Restated *pro forma* Delegation Agreement and the revised uniform CMEP, respectively (**Attachment 11**).

Attachments 4 through 11 each contains a letter from the President or other officer of the Regional Entity stating that its Board has approved the Amended and Restated Delegation Agreement and that the Regional Entity is prepared to execute it upon Commission approval.

The Amended and Restated *Pro Forma* Delegation Agreement, the revised NERC CMEP including new Attachment 2, Hearing Procedures, the amendments to Sections 403, 409 and 1503 of the NERC ROP, the individual amended and restated delegation agreements between NERC and each of the eight Regional Entities, the revised bylaws and standards development procedures of FRCC, MRO, NPCC, ReliabilityFirst, SERC, SPP and WECC, the Texas RE-specific provisions of the ERCOT Bylaws and the Texas RE Standards Development Procedures, and the revised CMEP and/or hearing procedures of ReliabilityFirst, Texas RE and WECC, were approved by the NERC Board of Trustees at its meeting on October 23, 2007.

Section III of this filing provides a discussion of the Amended and Restated *Pro Forma* Delegation Agreement (§III.A), the revised NERC uniform CMEP including the revised Attachment 2 - Hearing Procedures (§III.B), and the proposed amendments to the NERC ROP (§III.C), that are being submitted for approval with this filing. These descriptions identify changes that have been made to these documents in response to specific directives in the April 19 Order as well as other revisions. Section III.D provides an overview of the amended and restated delegation agreements between NERC and the eight Regional Entities. Section IV of this filing contains the specific responses, on a paragraph-by-paragraph basis, to the directives in the April 19 Order, including identification of the specific changes that have been made to the *pro forma* Delegation Agreement, the uniform CMEP and the Hearing Procedures, the NERC ROP, and each of the eight Regional Entity delegation agreements, in response to each of those directives.

II. NOTICES AND COMMUNICATIONS

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III. DISCUSSION OF DOCUMENTS SUBMITTED WITH THIS FILING

A. Amended and Restated *Pro Forma* Delegation Agreement

A limited number of changes have been made to the *pro forma* Delegation Agreement. The revised *pro forma* Delegation Agreement being submitted with this filing is captioned “Amended and Restated *Pro Forma* Delegation Agreement.”

Base Delegation Agreement – Section 8(b). In Section 8, Funding, subsection 8(b) has been revised to provide that the costs of carrying out the Regional Entity’s responsibilities under the Delegation Agreement will be recovered from end users within the Regional Entity’s boundaries through a formula based on net energy for load “or through such other formula as is expressly provided for in the annual business plan and budget submitted by NERC and [Regional Entity] to the Commission pursuant to 18 C.F.R. §39.4”. This provision will provide flexibility to NERC and individual Regional Entities to use alternative allocation formulas as specific circumstances warrant. This flexibility is necessary, among other reasons, to assist in resolving issues that have been raised by certain Canadian members of NERC concerning the use of the net energy for load allocation formula in light of the fact that Canadian entities also bear costs for reliability compliance and enforcement activities in Canada.⁷ Other circumstances may arise in the future which this flexibility may be useful in addressing. However, the requirement that any alternative allocation formula be expressly provided for in the annual business plan and budget submitted to the Commission means that any alternative formula will have to be approved by the Commission before it can be used as a basis for assessments to load-serving entities.

⁷See, e.g., §VIII and Attachment 5 of NERC’s August 24, 2007 filing in Docket No. RR07-16 requesting acceptance of its 2008 business plan and budget and the 2008 business plans and budgets of the Regional Entities and for approval of the proposed assessments to fund the 2008 budgets.

Base Delegation Agreement – Section 8(e). Also in Section 8, two revisions have been made to subsection (e). First, the requirement that the Regional Entity’s budget submission shall include “the budget, supporting materials, and proposed allocation and method of collection for the costs of any approved regional advisory body” has been deleted. At present, the only regional advisory body that has been established pursuant to §215(j) of the Federal Power Act (“FPA”) is the Western Interconnection Regional Advisory Body (“WIRAB”).⁸ However, for the 2007 and 2008 budget cycles, WIRAB developed and submitted its proposed budget directly to NERC, independently of WECC. NERC expects WIRAB to continue to follow this approach, and anticipates that any future regional advisory bodies would also develop their budgets independently of the Regional Entit(ies) and submit their budgets directly to NERC. Therefore, NERC and the Regional Entities concluded that the text in Section 8(e) requiring the Regional Entity to include the regional advisory body’s budget submission with the Regional Entity budget submission is not reflective of the practice being followed, and unnecessary.

Second, the last sentence of Section 8(e), which states that the Regional Entity shall follow NERC’s prescribed system of accounts, has been modified by the addition of the phrase “except to the extent that NERC permits a departure from the prescribed system of accounts.” At present, for reporting purposes, the Regional Entities are utilizing the income statement accounts in the NERC system of accounts. However, because of differences in corporate structures between and among NERC and the Regional Entities, NERC has not required the Regional Entities to use the balance sheet accounts in the NERC system of accounts. The last sentence of Section 8(e) has been revised to recognize that it may not be possible for the

⁸See *Order on Petition to Establish a Regional Advisory Body for the Western Interconnection*, Docket No. RR06-2-000, 116 FERC ¶61,061 (2006).

Regional Entities to use the full NERC system of accounts and to allow for deviations if authorized by NERC, as is presently the case with respect to the balance sheet accounts.⁹

Base Delegation Agreement, Section 8(k). Section 8(k) has been revised to comply with the directive in PP 227-229 of the April 19 Order that penalty monies received by a Regional Entity from an operational function or division or affiliated entity should be transmitted to NERC to be used as an offset to NERC's budget for the following year (rather than used as an offset to the Regional Entity's budget for the subsequent year).

Exhibit B. The format of Exhibit B to the *pro forma* Delegation Agreement has been modified. Previously, Exhibit B set forth five governance criteria, each of which was followed by a description of how the Regional Entity's governance met the criterion, including references to or quotes from applicable provisions of the Regional Entity's bylaws or other relevant governance documents. However, in light of the Commission's statements in the April 19 Order that the bylaws of each Regional Entity are Regional Entity rules that must be submitted to and approved by NERC and then by the Commission pursuant to 18 C.F.R. §§39.1 and 39.10 and P 113 of Order No. 672¹⁰, NERC and the Regional Entities have determined that Exhibit B should include the full bylaws of the Regional Entity. Accordingly, Exhibit B to the Amended and Restated *Pro Forma* Delegation Agreement consists of (i) a statement that "Exhibit B shall set forth the Regional Entity's bylaws, which NERC agrees demonstrate that the Regional Entity

⁹Because the annual Regional Entity budgets for statutory activities that NERC must review and approve and then submit to the Commission for approval consist entirely or almost entirely of income statement (current period) items, it is much more critical that the Regional Entities use the income statement accounts in the NERC system of accounts, thereby facilitating review and analysis of the Regional Entity budget proposals for consistency and comparability.

¹⁰April 19 Order at PP 245, 275, 298, 333, 366, 404, 457 and 553.

meets the following criteria”¹¹, and (ii) the five governance criteria. Each individual delegation agreement will then also include the entire bylaws of the Regional Entity.

Exhibit C. The format of Exhibit C to the *pro forma* Delegation Agreement has been modified. Previously, Exhibit C set forth 34 common attributes of an acceptable standards development procedure, each of which was followed by a description of how the Regional Entity’s standards development procedure satisfied the common attribute, including references to or quotes from applicable provisions of the Regional Entity’s standards development procedure or other relevant documents. However, in light of the Commission’s statements in the April 19 Order that the standards development procedures or manuals of each Regional Entity are Regional Entity rules that must be submitted to and approved by NERC and then by the Commission pursuant to 18 C.F.R. §§39.1 and 39.10 and P 113 of Order No. 672¹², NERC and the Regional Entities have determined that Exhibit C should include the full standards development procedure or manual of the Regional Entity. Accordingly, Exhibit C to the Amended and Restated *Pro Forma* Delegation Agreement consists of (i) a statement that “Exhibit C shall set forth the Regional Entity’s standards development procedure, which NERC agrees meets the following common attributes”, and (ii) the 34 common attributes. Each individual delegation agreement will then also include the entire standards development procedure or manual of the Regional Entity.¹³

¹¹This statement in Exhibit B to the Reliability *First* Delegation Agreement also refers to portions of the Reliability *First* Regional Standard Development Procedure.

¹²April 19 Order at PP 249, 280, 302, 339, 371, 419, 473 and 557.

¹³For reasons discussed in §III.D.7 below, the Texas RE Delegation Agreement is an exception to this format.

Exhibit E, Section 2. In Exhibit E, Section 2, Allocation of Costs, has been revised in the same manner and for the same reason as Section 8(a) of the base delegation agreement, as described above. Revised Section 2 also requires the Regional Entity to submit to NERC, as part of the annual budget submission, “such other data and information as is necessary to allocate and calculate [Regional Entity’s] dues, fees and charges under any such different method(s) of allocation and calculation that will be used.”

Exhibit E, Section 3. In Exhibit E, Section 3, Collection of Funding has been revised in response to P 213 of the April 19 Order, to include, if the Regional Entity acts as the billing and collection agent on behalf of NERC to bill and collect assessments from load-serving entities in the Regional Entity’s region, appropriate safeguards to ensure that (i) the Regional Entity transfers the monies to NERC in a timely manner, and (ii) the Regional Entity does not use its position as NERC’s billing and collection agent to unduly influence NERC’s decisions.

Exhibit E, Section 4. In Exhibit E, Section 4, Application of Penalties, has been revised in the same manner and for the same reason as the revision to Section 8(k) of the base Delegation Agreement, described above.

Exhibit E, Section 5. Section 5, Budget and Funding for Regional Entity’s Non-Statutory Activities, has been added to Exhibit E. New Section 5 provides that if the Regional Entity performs any non-statutory activities, the Regional Entity must submit a detailed list of, and its budget for, the non-statutory activities to NERC at the same time as the Regional Entity submits its annual budget request for statutory activities. The Regional Entity must also submit a detailed description of the non-statutory activities and a statement of the Regional Entity’s procedures to ensure that funding of the non-statutory activities will be kept separate from the funding of the Regional Entity’s delegated functions and activities. Finally, Section 5

memorializes the Regional Entity's agreement that no costs of non-statutory activities are to be included in the calculation of the Regional Entity's dues, fees and other charges for its delegated activities. The information required by Section 5 will enable NERC to comply with the requirements of 18 C.F.R. §39.4(b) and the directive in the Commission's order on the NERC and Regional Entity 2007 budget submissions that the annual budget submissions should include the Regional Entities' total budgets for statutory and non-statutory activities and supporting materials¹⁴, and to verify that the proposed assessments to load-serving entities within each region are calculated to recover only the Regional Entity's budget for statutory activities.

B. NERC Compliance Monitoring and Enforcement Program

1. Base CMEP and Attachment 1

The discussion below highlights the revisions in the base CMEP document by major section. In addition to the revisions expressly noted below, editorial corrections have been made throughout the CMEP to (i) correctly and consistently use defined terms, (ii) capitalize only defined terms, (iii) provide correct internal cross-references within the CMEP document and correct cross-references to other documents such as the NERC ROP, (iv) describe similar steps in different compliance monitoring processes in a consistent manner, and (v) correct miscellaneous typographical errors. All revisions that have been made to the text of the CMEP, both substantive and typographical, are shown on the redlined version provided as **Attachment 2B** to this filing.

a. Section 1.0, Introduction, and Section 1.1, Definitions.

The definition of "Applicable Governmental Authority" (1.1.3) has been revised to include the Commission within the U.S. and the appropriate governmental authorities with

¹⁴*North American Electric Reliability Corp.*, 117 FERC ¶61,091 (2006), at P 125.

subject matter jurisdiction over reliability in Canada and Mexico. This revision was made in response to a comment in P 204 of the April 19 Order that the definition of “Applicable Governmental Authority” excludes the Commission. The revised definition is consistent with the definition of the term in Article I, Section 1 of the NERC Bylaws. Corresponding revisions have been made throughout the text of the CMEP to make references to “Applicable Governmental Authority” consistent with the revised definition.

The definition of “Contested Violation” has been removed because it is not used in the CMEP document.

The definition of “Exception Reporting” (1.1.10) has been revised in response to the directive in PP 183-184 of the April 19 Order.

The definition of “NERC Compliance Monitoring and Enforcement Implementation Plan” (1.1.13) has been modified to include the shortened term “NERC Implementation Plan” which is used elsewhere in the CMEP.

The definition of “Regional Compliance Registry” (1.1.15) has been modified to include a reference to the NERC *Statement of Compliance Registry Criteria*.

The definition of “Self-Reporting” (1.1.21) has been revised for clarification purposes.

The definitions have been renumbered and re-ordered to reflect the elimination of one definition and to present the definitions in alphabetical order.

b. Section 2.0, Identification of Organizations Responsible for Complying with Reliability Standards.

No substantive changes have been made to Section 2.0.

c. Section 3.0, Compliance Monitoring and Enforcement Processes.

The third paragraph of Section 3.0 has been substantially revised and expanded to provide a more detailed description of what was previously referred to as the “facts and

circumstances review” of an Alleged Violation by the Compliance Enforcement Authority, in response to PP 175-176 of the April 19 Order.

A new (sixth) paragraph has been added to Section 3.0 in response to P 198 of the April 19 Order (requiring that Registered Entities be allowed to use “general principles of agency”), to specify that any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by “an officer, employee, attorney or other authorized representative of the Registered Entity.” This paragraph also authorizes NERC or the Compliance Enforcement Authority to require the signer to provide a statement of the basis of his or her authority; and provides for the use of electronic signatures.

Figure 3.0, NERC Compliance Program Processes, has been revised to be consistent with process steps in the current version of the CMEP.

Section 3.1, Compliance Audits. A sentence has been added in the first paragraph of Section 3.1 stating that NERC’s audit guides for each Reliability Standard (also referred to as Reliability Standard Audit Worksheets) will be posted on NERC’s website.

Section 3.1.3 has been revised in response to the directives in PP 45, 47 and 50 of the April 19 Order, to specify (i) the Commission may direct NERC or a Regional Entity to undertake an unscheduled Compliance Audit at any time, (ii) NERC and the Commission shall receive notification of an unscheduled Compliance Audit, (iii) a Registered Entity shall receive at least ten business days notice of an unscheduled Compliance Audit, including identification of the members of the Compliance Audit team, and shall make any objections to the composition of the Compliance Audit team (based on failure to meet the criteria in §3.1.5) at least five business days before the start of on-site audit work.

Section 3.1.5 has been revised, in response to the directives in PP 47 and 50 of the April 19 Order, to specify that if a Compliance Audit team member is appointed less than twenty days prior to the start of on-site audit work, the Registered Entity must submit any objections concerning the Compliance Audit team member within five business days after receiving notice of the appointment of the Compliance Team member in the case of a scheduled Compliance Audit, and no more than five business days before the start of on-site audit work in the case of an unscheduled Compliance Audit.

Section 3.1.6 has been revised in response to the directive in P 51 of the April 19 Order, to provide that NERC and the Compliance Enforcement Authority may not publicly release an audit report or pertinent part thereof identifying an Alleged Violation or proposed penalty or sanction until NERC submits a notice of penalty to the Commission or the Alleged Violation has been admitted by the Registered Entity or resolved by a settlement.

Section 3.2, Self-Certification. No substantive revisions have been made to Section 3.2.

Section 3.3, Spot Checking. A step has been added to Section 3.3.1, Spot Checking Process Steps, in response to P 194 of the April 19 Order, to provide for the Compliance Enforcement Authority to review its draft assessment of the Registered Entity's compliance with the Registered Entity and to allow the Registered Entity the opportunity to submit comments on the draft assessment.

Section 3.4, Compliance Violation Investigations. Section 3.4 has been revised to specify that a Compliance Violation Investigation may be initiated at any time by NERC or by the Commission or another Applicable Governmental Authority, as well as by the Compliance Enforcement Authority.

Section 3.4 has also been revised in response to P 66 of the April 19 Order (i) to eliminate the “for good cause” requirement for NERC’s exercise of its right to assume the leadership of a Compliance Violation Investigation, (ii) to add footnote 4 setting forth examples of situations in which NERC may decide to lead a Compliance Violation Investigation, and (iii) to specify that a Regional Entity may not appeal NERC’s decision to lead a Compliance Violation Investigation.

Section 3.4 has been further revised in response to P 126 of the April 19 Order to specify that a Compliance Violation Investigation will not be confidential if the Commission directs that the Compliance Violation Investigation shall be public or that certain information obtained in the Compliance Violation Investigation shall be publicly disclosed.

In Section 3.4.1, Compliance Violation Investigation Process Steps, the first step has been revised in response to P 68 of the April 19 Order (i) to detail the notifications that the Compliance Enforcement Authority must provide to the Registered Entity and to NERC within two business days following the decision to initiate a Compliance Violation Investigation, and (ii) to state that while the Compliance Enforcement Authority may at its discretion notify the Registered Entity of the reasons for the Compliance Violation Investigation, the investigation, as it unfolds, need not be limited to this scope.

The third process step in Section 3.4.1 has been revised in response to P 69 of the April 19 Order to specify that the Registered Entity may not object to participation by NERC or by the staff of the Commission or another Applicable Governmental Authority on a Compliance Violation Investigation team.

The fourth process step in Section 3.4.1 has been revised in response to P 69 of the April 19 Order to specify that the Registered Entity must submit any objections concerning a member

of the Compliance Violation Investigation team within ten business days after receiving notice of the Compliance Violation Investigation.

The eighth process step in Section 3.4.1 has been revised in response to P 70 of the April 19 Order to specify that the Compliance Enforcement Authority may require the Registered Entity (i) to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the Compliance Enforcement Authority's requests for documents and information; and (ii) to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath concerning the matters under investigation.

Section 3.5, Self-Reporting. The fifth step in Section 3.5.1, Self-Reporting Process Steps, has been revised to state that if the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standards has occurred, "it shall send the Registered Entity a notice containing the information set forth in Section 5.1". This revision makes this step consistent with the comparable step in the other Compliance Monitoring processes in the CMEP.

Section 3.6, Periodic Data Submittals. A new (fifth) step has been added to Section 3.6.1, Periodic Data Submittal Process Steps, in response to P 190 of the April 19 Order, to provide that the Compliance Enforcement Authority shall review its draft assessment of the Registered Entity's compliance with the Registered Entity and allow the Registered Entity an opportunity to comment on the assessment before it is finalized.

Section 3.7, Exception Reporting. No changes have been made to this section.

Section 3.8, Complaints. The first paragraph of Section 3.8 has been revised in response to P 117 of the April 19 Order to provide that NERC will review any Complaint that is related to a Regional Entity “or its affiliates, divisions, committees or subordinate structures.”

Section 3.8.2, Anonymous Complaint Notification Procedure, has been revised in response to P 117 of the April 19 Order to change references to reports of Alleged Violations (a defined term signifying the results of a completed investigation and assessment) to reports of “possible violations.”

d. Section 4.0, Annual Implementation Plans.

No substantive revisions have been made to this section.

e. Section 5.0, Enforcement Actions

Section 5.1, Notification to Registered Entity of Alleged Violation. This Section has been revised in response to P 92 of the April 19 Order to require that the written notice of Alleged Violation include notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity’s right to contest the Alleged Violation and/or the proposed penalty or sanction.

Section 5.1 has also been revised in response to P 160 of the April 19 Order to require that the written notice of Alleged Violation include notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed penalty or sanction, it may elect to have a hearing pursuant to either the full hearing procedure or the shortened hearing procedure in Attachment 2, Hearing Process.

Section 5.2, Registered Entity Response. This section has been revised in response to P 198 of the April 19 Order (which requires that Registered Entities should be allowed to use

“principles of agency”) to specify that the Registered Entity’s response contesting an Alleged Violation or proposed penalty or sanction and explaining its position shall be signed by an “officer, employee, attorney or other authorized representative” of the Registered Entity.

Section 5.4, Settlement Process. This section has been revised in response to P 104 of the April 19 Order to specify that settlement negotiations may occur prior to the issuance of a notice of Alleged Violation and sanction.

In the third paragraph of Section 5.4, the sentence “If a settlement cannot be reached, the compliance hearing process shall continue to conclusion”, has been deleted because it was superfluous.

The fourth paragraph of Section 5.4 has been revised in response to P 105 of the April 19 Order to specify that in posting notice of an approved settlement, NERC will (i) publicly post the violation settled regardless of whether the settlement does or does not include an admission of a violation, and (ii) include a copy of the settlement or a description of its terms. Additionally, a cross-reference has been added to Section 8.0 where postings of Confirmed Violations are addressed.

Section 5.5, NERC Appeal Process. This section has been revised in response to P 173 of the April 19 Order to specify that (i) in an appeal from a decision of a Regional Entity hearing body, NERC shall either affirm the decision or remand the decision to the Regional Entity with reasons for NERC’s decision; and (ii) NERC may also direct the Regional Entity to revise a decision that clearly conflicts with the goal of consistent national reliability enforcement or where the requirement to revise the Regional Entity decision is necessary for NERC’s oversight of Regional Entity compliance activities; in the case of such a direction, any participant in the hearing process may then reopen the proceedings on any issue.

Section 5.6, Notice of Penalty. This section has been revised in response to P 173 of the April 19 Order to specify that where a Registered Entity does not dispute a notice of Alleged Violation and the penalty or sanction has been entered finding a violation and all appeals have been concluded, NERC may nonetheless direct the Regional Entity to revise the penalty determination if it clearly conflicts with the goal of consistent national reliability enforcement, and that in such event any participant may reopen the proceedings on any issue irrespective of whether the issue was previously litigated, settled or unopposed.

Section 5.6 has also been revised to specify that the penalty or sanction will be effective upon expiration of the thirty day period following filing of the notice of penalty with the Commission or, if the Commission decides to review the penalty or sanction, upon final determination by the Commission, as specified in the Commission's regulations at 18 C.F.R. §39.7(e) and in Section 407.4 of the NERC ROP.

f. Section 6.0, Mitigation of Violations of Reliability Standards

Section 6.1, Requirement for Submission of Mitigation Plans. Figure 6.1, Mitigation Plan Process, has been revised to be consistent with the process steps as set forth in the text.

Section 6.2, Contents of Mitigation Plans. This section has been revised in response to P 198 of the April 19 Order (which requires that Registered Entities should be allowed to use "principles of agency") to specify that a Mitigation Plan submitted by a Registered Entity shall be signed by "an officer, employee, attorney or other authorized representative."

Section 6.3, Timetable for Completion of Mitigation Plans. In the last sentence of the first paragraph of this section, the phrase "of the applicable Reliability Standards(s)" has been inserted as directed by P 87 of the April 19 Order.

A new paragraph has been added at the end of Section 6.3 in response to P 88 of the April 19 Order, stating: “If a Mitigation Plan submitted by a Registered Entity is rejected by the Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any penalties or sanctions imposed for such violations.”

Section 6.4, Submission of Mitigation Plans. In response to P 88 of the April 19 Order, this section has been revised to state that if “the Registered Entity submits a Mitigation Plan but it is rejected by the Compliance Enforcement Authority or the hearing body in accordance with Section 6.5” any subsequent violations of the Reliability Standard identified by the Compliance Enforcement Authority before the hearing body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

Section 6.5, Review and Acceptance or Rejection of Proposed Mitigation Plans. This section has been revised to specify that when notifying NERC of an accepted Mitigation Plan, the Regional Entity will provide the accepted Mitigation Plan to NERC. This section has also been revised to specify (i) NERC will review the Mitigation Plan and will notify the Regional Entity, which in turn will notify the Registered Entity, as to whether the Mitigation Plan is approved or disapproved by NERC, (ii) if NERC disapproves the Mitigation Plan, it shall state its reasons for disapproval, and may state changes to the Mitigation Plan that would result in approval by NERC. These revisions are appropriate so that the CMEP states the procedures that will be followed in NERC’s review and approval (or disapproval) of Mitigation Plans that have been approved at the Regional Entity level. Finally, this section has been revised in response to PP 7 and 9 of the Commission’s June 13, 2007 Order in Docket No. RR07-13-000, to add a

provision that NERC will submit to the Commission, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven business days after NERC approves the Mitigation Plan.¹⁵

Section 6.6, Completion/Confirmation of Implementation of Mitigation Plans. This section has been revised in response to P 198 of the April 19 Order (which requires that Registered Entities should be allowed to use “principles of agency”) to specify that upon completion of a Mitigation Plan, the Registered Entity shall provide to the Compliance Enforcement Authority a certification that all required actions have been completed, which shall be signed by “an officer, employee, attorney or other authorized representative.”

Section 6.7, Recordkeeping. No substantive revisions were made to this section.

g. Section 7.0, Remedial Action Directives

Section 7.0 has been revised in response to P 93 of the April 19 Order to specify that a Remedial Action Directive must be provided to a Registered Entity in a notice which shall include (i) a list of the violations or possible violations of Reliability Standards that are the basis for issuance of the Remedial Action Directive, and (ii) a discussion of the factual basis for the Remedial Action Directive, as well as (iii) a deadline for compliance and (iv) notice to the Registered Entity that failure to comply by the Required Date may result in further Remedial Action Directives or significantly increased sanctions. Additionally, Section 7.0 has been revised in response to P 93 of the April 19 Order to specify that the time period within which the Registered Entity must contest a Remedial Action Directive does not start to run until the Registered Entity has received notice of the Remedial Action Directive from the Compliance Enforcement Authority.

¹⁵*North American Electric Reliability Corp., Order Clarifying Procedures*, 119 FERC ¶61,274 (2007), at PP 7 and 9.

Section 7.0 has also been revised in response to P 94 of the April 19 Order to make it clear that the expedited hearing process set forth in what is now Section 1.9 of Attachment 2, Hearing Procedures, is the process available to a Registered Entity to contest a Remedial Action Directive, and is to be used due to the urgency of resolving any objections to a Remedial Action Directive.¹⁶

Finally, the last sentence of Section 7.0 has been revised to make it clear that a Registered Entity that contests a Remedial Action Directive may elect not to implement the Remedial Action Directive until the hearing process is completed, or may proceed with implementing the Remedial Action Directive while contesting it.

h. Section 8.0, Reporting and Disclosure

The second paragraph of Section 8.0 has been revised in response to PP 200-201 of the April 19 Order to specify that Regional Entities shall report to NERC, and NERC shall in turn notify the Commission, of all allegations or evidence of violations of Reliability Standards that are received through any means, as required by 18 C.F.R. §39.7(b) and Section 408 of the NERC ROP (rather than only reporting “Alleged Violations”).

The fourth paragraph of Section 8.0 has been revised in response to P 198 of the April 19 Order (which requires that Registered Entities should be allowed to use “principles of agency”) to specify that if a Registered Entity submits a statement to NERC to accompany NERC’s posting of a report of Confirmed Violation, the report must include the name, title and signature of “an officer, employee, attorney or other authorized representative.” The requirement that the Registered Entity’s statement “be on company letterhead” has been deleted.

¹⁶As defined in Section 1.1.18 of the CMEP, a Remedial Action Directive is issued only (1) to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) when immediately necessary to protect the reliability of the bulk power system from an imminent threat.

i. Section 9.0, Data Retention and Confidentiality

Section 9.1, Records Management. No changes have been made to this section.

Section 9.2, Retention Requirements. This section has been revised in response to P 205 of the April 19 Order to (i) list all the compliance monitoring processes that will generate information and data that is subject to the retention requirement, and (ii) specify that the obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information.

This section has also been revised in response to P 204 of the April 19 Order to specify that the required record retention period is the longer of five years or any retention period specified in a Reliability Standard or by the Commission or another Applicable Governmental Authority.

Section 9.3, Confidentiality and Critical Energy Infrastructure Information. No substantive changes have been made to this section.

j. Attachment 1, Process for Non-Submittal of Requested Data

No substantive changes have been made to Attachment 1. The only changes made to Attachment 1 were for (i) correct use of capitalization and (ii) consistent use of terms.

2. Attachment 2, Hearing Procedures

Attachment 2, Hearing Procedures, to the CMEP has been completely revised and significantly expanded in scope, detail and specificity. Attachment 2 to the CMEP as originally filed with the Commission in November 2006 contained approximately six pages of text, whereas revised Attachment 2 is over 33 pages long.¹⁷

¹⁷Because Attachment 2 has been comprehensively revised and greatly expanded, and uses a different numbering scheme and organization of topics than did Attachment 2 to the CMEP filed in November 2006, NERC is not providing a redline of revised Attachment 2 against the original

The revised Attachment 2 resulted from a joint initiative by the six Regional Entities in the Eastern Interconnection¹⁸ to develop a more detailed and informative set of uniform hearing procedures to be used in their compliance enforcement hearings. In developing the revised hearing procedures, the six Regional Entities drew on, among other sources, procedural rules of various regulatory commissions as well as the procedural rules of the National Association of Securities Dealers. The six Regional Entities submitted a draft of their proposed hearing procedures to NERC in May 2007. NERC reviewed and commented on the Regional Entities' draft hearing procedures, suggesting both substantive and format changes (*e.g.*, changes to maintain consistent use of defined terms between the CMEP document and Attachment 2). Among other things, NERC reviewed the Regional Entities' draft hearing procedures to determine that they addressed all the directives in the April 19 Order for revisions to NERC's original Hearing Process document, and provided revisions or additional text for the hearing procedures where necessary to address these directives. NERC and the six Regional Entities engaged in further discussions concerning the hearing procedures and exchanged subsequent drafts, until a document was arrived at that NERC concluded it could adopt as Attachment 2 to the CMEP.

In Exhibit D to their respective individual delegation agreements being submitted with this filing, the six Regional Entities have adopted the new Attachment 2 to the NERC CMEP with only limited exceptions. With respect to the other two Regional Entities, Texas RE is using a modified version of Attachment 2 based on hearing procedures used by the Public Utility Commission of Texas ("PUCT"), because the PUCT is the hearing body for the Texas RE

Attachment 2, as such a redline would not provide a useful means of comparing the two documents.

¹⁸FRCC, MRO, NPCC, ReliabilityFirst, SERC and SPP.

compliance program; and WECC has chosen to use a shorter version of Attachment 2 that nonetheless contains all the necessary elements. (*See* discussion in §III.D.8 below concerning WECC.) The Texas RE and WECC hearing procedures documents are included in **Attachments 10 and 11**, respectively.

NERC is fully aware of the Commission’s general view that compliance filings such as the instant filing should only address changes to ERO rules required for compliance with a previous Commission order, and that other changes to the same ERO rules should be submitted to the Commission in separate filings. However, NERC urges the Commission to review and approve the revised Attachment 2 to the CMEP submitted with this filing in its entirety. It is important that NERC and the Regional Entities have approved hearing procedures in place for use, in the near future, as Registered Entities may begin to contest notices of Alleged Violations of Reliability Standards and Remedial Action Directives or proposed Mitigation Plans. Piecemeal review and approval of the Hearing Process document submitted with this filing would not be in the best interests of NERC, the Regional Entities, the Commission, Registered Entities, or the fulfillment of the objectives of the Compliance Program.

Further, the expanded scope, detail and specificity of revised Attachment 2 as compared to the original Hearing Process attachment to the CMEP represents a material improvement in terms of the clarity of the procedures, which will benefit Registered Entities, the Regional Entities and NERC. The expanded scope, detail and specificity of revised Attachment 2 is also fully consistent with the overall focus of Commission’s directives in the April 19 Order for specific revisions of the original Hearing Process document. For example, in P 148 of the April 19 Order, the Commission expressed a concern that “without specific, codified rules to be applied [by the hearing body] in these cases [i.e., “all procedural and discovery matters”], there

could be the potential for arbitrary, inconsistent rulings. Moreover, these rulings may lead to disparate procedures among the Regional Entities and lead to a lack of uniformity.” Accordingly, the Commission directed NERC “to address this concern.” Similarly, in P 149 of the April 19 Order, the Commission noted the absence of and need for “specific rules on discovery.” The greatly expanded scope, detail and specificity in revised Attachment 2 is responsive to these and similar concerns expressed in the April 19 Order. Moreover, the revised hearing procedures are now generally consistent with and very similar to the type of procedural rules used by many utility regulatory bodies and other administrative bodies before which quasi-judicial proceedings are conducted, and therefore should provide a high degree of familiarity for Registered Entities.

Section IV.A.7 of this filing reviews the specific directives in the April 19 Order concerning the Hearing Process attachment to the CMEP submitted in November 2006, on a paragraph-by-paragraph basis, and shows how and where each of these directives is addressed in the revised Hearing Procedures attachment submitted with this filing. The remaining discussion in this Section III.B.2 provides an overview of the organization of the revised Hearing Procedures attachment to the CMEP.

Paragraph 1.1, Applicability, Definitions and Interpretation, provides definitions of terms used in Attachment 2 and guidelines for interpreting the Hearing Procedures and for the application of discretion by the Hearing Body and its Hearing Officer. Standards for Discretion are provided in Paragraph 1.1.3, rules for Interpretation are provided in Paragraph 1.1.4, and Definitions are provided in Paragraph 1.1.5 (which states that the definitions in Section 1.1 of the CMEP are also applicable to Attachment 2).

Paragraph 1.2, General Provisions including Filing, Service, Transcription and Participation provides general procedural rules concerning the content, form and service of filings and the conduct of hearings in proceedings before the Hearing Body. Paragraph 1.2.1 lists required contents, and Paragraph 1.2.2 lists requirements for form, of all filings. Paragraph 1.2.3 sets forth requirements concerning where, when and how to file documents, numbers of copies, and signature, verification and proof of service. Paragraph 1.2.4 provides requirements for service of filings on other Participants. Paragraph 1.2.5 sets forth rules for computing time periods and due dates. Paragraphs 1.2.6 and 1.2.7 provide for extensions of time and amendment of filings, respectively. Paragraph 1.2.8 requires that a transcript record of all hearings be made by a certified court reporter. Paragraph 1.2.9 specifies that all actions taken by the Hearing Officer shall be recorded in a ruling, notice, order or other issuance or stated on the transcribed record. Paragraph 1.2.10 specifies the location of hearings. Paragraph 1.2.11 allows participation in hearings by teleconference (except by witnesses), and provides that the Compliance Staff shall have the same rights and duties as other Participants. Paragraph 1.2.12 prohibits interventions, unless authorized by the Commission. Paragraph 1.2.13 states that hearings shall be closed to the public. Paragraph 1.2.14 provides for maintenance of a docketing system. Finally, Paragraph 1.2.15 specifies that as a condition of invoking and participating in the hearing process, a Participant agrees to waive claims against the Compliance Enforcement Authority, including its members, board, committees and subcommittees, staff and contracted employees, Hearing Body members, Hearing Officers and Technical Advisors, arising out of the hearing process (but excluding claims relating to matters constituting gross negligence, intentional misconduct or breach of confidentiality).

Paragraph 1.3, Initiation of the Hearing Process sets forth procedures relating to the commencement of the hearing process. Paragraph 1.3.1 addresses how and when a Registered Entity requests a hearing concerning a notice of Alleged Violation and/or proposed penalty or a disputed Mitigation Plan, including the contents of the Registered Entity's request. Paragraph 1.3.2 sets forth the procedures for the Shortened Hearing Procedure, which the Registered Entity has the opportunity to elect rather than the full hearing procedure detailed in Paragraphs 1.4 through 1.7.

Paragraph 1.4, General Hearing Procedure, sets forth general procedures for the full hearing process. Paragraph 1.4.1 states requirements for issuance and contents of the initial notice of hearing. Paragraph 1.4.2 provides for, and sets forth the authority and duties, of Hearing Officers to preside over a hearing. Paragraph 1.4.3 sets forth the authority and duties of the Hearing Body in the hearing process. Paragraph 1.4.4 establishes procedures by which a Participant can seek interlocutory review by the Hearing Body of a ruling by the Hearing Officer. Paragraph 1.4.5 provides grounds for, and procedures for requesting, disqualification of a Hearing Officer, Technical Advisor or member of the Hearing Body. Paragraph 1.4.6 provides for the use of Technical Advisors by the Hearing Officer and/or the Hearing Body. Paragraph 1.4.7 prohibits *ex parte* communications with the Hearing Officer, members of the Hearing Body or any Technical Advisors. Paragraph 1.4.8 sets forth requirements for appearances by the Participants. Paragraph 1.4.9 specifies that failure of a Participant to appear during a hearing without good cause and notification may be grounds for dismissal or deciding against the interests of the Participant. Finally, Paragraph 1.4.10 provides for consolidation of proceedings involving notices of Alleged Violations for the same event or transaction.

Paragraph 1.5, Prehearing Procedures sets forth prehearing procedures. Paragraph 1.5.1 specifies that a Registered Entity that elects the full hearing process shall be deemed to have waived any time limit requirements in the NERC ROP. Paragraph 1.5.2 provides for prehearing conferences. Paragraph 1.5.3 provides for summary disposition at the request of a Participant or on the Hearing Officer's own motion, where there are no genuine issues of material fact. Paragraph 1.5.4 provides for status hearings. Paragraph 1.5.5 provides procedures for filing motions. Paragraph 1.5.6 specifies that a Participant may utilize testifying or consulting experts and establishes related confidentiality requirements. Paragraph 1.5.7 provides detailed rules and procedures by which the Compliance Enforcement Authority Staff must make documents available for inspection and copying by the Respondent. Paragraph 1.5.8 establishes that Participants may also use all other discovery methods commonly used in civil courts, and provides for discovery to be scheduled and supervised by the Hearing Officer. Paragraph 1.5.9 provides procedures for the pre-hearing submission and distribution of witness testimony and other exhibits by the Participants. Paragraph 1.5.10 provides for entry of protective orders to protect confidential information. Paragraph 1.5.11 specifies that the Hearing Officer may require the submission of pre-evidentiary hearing memoranda.

Paragraph 1.6, Evidentiary Hearing Procedures, sets forth the procedures to be followed in the evidentiary hearing. Paragraph 1.6.1 states the purpose of the evidentiary hearing. Paragraph 1.6.2 specifies that the standard of proof is preponderance of the evidence and that the burden of persuasion shall be on the Compliance Staff. Paragraph 1.6.3 states that opening and closing statements typically will not be permitted, but provides some exceptions. Paragraph 1.6.4 states that a Participant has the right to present evidence and conduct cross-examination to assure true and full disclosure of facts. Paragraph 1.6.5 specifies that unless the

Hearing Officer allows oral testimony, all material offered in evidence, including testimony, shall be in the form of written exhibits.

Paragraph 1.6.6 states that, unless waived, witness attendance at the hearing is required and specifies that all testimony is to be under oath or affirmation or, if the witness' attendance is waived, supported by affidavit. Paragraph 1.6.7 addresses the sequence of presentation of evidence by the Participants and the admission of evidence into the record, and requires that, except for good cause in exceptional cases, witness testimony must be submitted and served in written form in advance of the hearing. Paragraph 1.6.8 provides procedures relating to submission of evidence that is part of a book, paper or document. Paragraph 1.6.9 provides for stipulations. Paragraph 1.6.10 specifies procedures for taking official notice and identifies facts and information of which official notice may be taken. Paragraph 1.6.11 provides the criteria for admissibility of evidence, with the principal criterion being that evidence shall be admitted if it is of a type commonly relied on by reasonably prudent persons in the conduct of their affairs. Paragraph 1.6.12 provides for offers of proof where evidence is excluded. Paragraph 1.6.13 addresses the timing of rulings by the Hearing Officer to evidentiary objections. Paragraph 1.6.14 sets forth procedures for cross-examination of witnesses, and specifies that each Participant shall have the right to cross-examine each witness of any other Participant. Paragraph 1.6.15 provides for redirect examination of witnesses, limited to the scope of the cross-examination. Paragraph 1.6.16 authorizes a Participant to call an adverse Participant or employee or agent thereof for oral examination as though under cross-examination. Paragraph 1.6.17 provides for the closing of the evidentiary record and permits reopening of the record thereafter by the Hearing Officer for good cause.

Paragraph 1.7, Post-Evidentiary Hearing Procedure, addresses the steps to be taken in the hearing process following completion of the evidentiary hearing. Paragraph 1.7.1 provides for initial and reply briefs. Paragraph 1.7.2 states that post-hearing pleadings other than briefs are permitted, but absent good cause shown may not seek to introduce additional evidence into the record. Paragraph 1.7.3 provides that the Hearing Officer may permit or require the Participants to file draft initial opinions with proposed findings of fact and conclusions. Paragraph 1.7.4 provides for issuance of an initial opinion by the Hearing Officer. Paragraph 1.7.5 specifies that the Participants may thereafter file briefs on exceptions and briefs in reply to exceptions, and specifies timing and content requirements for those submissions. Paragraph 1.7.6 specifies that the Hearing Body may elect to hear oral argument, and specifies rules and procedures for oral argument. Paragraph 1.7.7 allows for the reopening of the record for additional hearings and the submission of additional evidence. Paragraph 1.7.8 provides requirements for the Hearing Body's final order, including that issuance of the final order shall require a quorum of the Hearing Body (after any recusals or disqualifications, at least 50 percent of the number of members normally assigned to the Hearing Body) and majority vote of the members voting on the final order (which shall not be less than a quorum). Paragraph 1.7.9 requires that a record be maintained for all dockets and sets forth the contents of the record. Paragraph 1.7.10 states that a final order of the Hearing Body may be appealed to NERC in accordance with Section 410 of the NERC ROP.

Paragraph 1.8, Settlement, specifies that settlements may be entered into at any time pursuant to Section 5.4 of the NERC CMEP and the Compliance Enforcement Authority's settlement procedures.

Paragraph 1.9, Remedial Action Directives, sets forth a more expedited hearing procedure to be used where a Registered Entity elects to contest a Remedial Action Directive. Paragraph 1.9.1 sets forth the procedure and timing for a Registered Entity to request a hearing on a Remedial Action Directive. Paragraph 1.9.2 sets forth the detailed, expedited procedures for hearings on contested Remedial Action Directives.

C. Revisions to the NERC Rules of Procedure

NERC is submitting for approval proposed amendments to Sections 403.14, 409 and 1503.7 (the latter a new subsection) to the NERC ROP. (See **Attachment 3**.) These revisions are proposed in response to P 126, P 174 and P 217, respectively, of the April 19 Order. The discussions of NERC's response to P 126, P 174 and P 217 in Section IV of this filing, below, explains the basis and purpose of these proposed ROP changes and how they address the specific directives in those three paragraphs of the April 19 Order.

D. NERC-Regional Entity Amended and Restated Delegation Agreements

Attachments 4 through 11 contain clean and redlined versions of the Amended and Restated Delegation Agreements between NERC and each of the eight Regional Entities, along with additional supporting documents. Each Attachment contains, as the first document in the Attachment after the cover page, a letter from the President or other officer of the Regional Entity stating the Regional Entity's intent to execute the Amended and Restated Delegation Agreement upon receipt of Commission approval.

The Amended and Restated Delegation Agreements between NERC and each Regional Entity that are being submitted with this filing incorporate two format changes to Exhibits B and C to the *pro forma* Delegation Agreement.¹⁹

¹⁹The discussion in the following two paragraphs does not apply to the Amended and Restated

The format of Exhibit B previously consisted of a set of five governance criteria, each followed by an explanation of how the Regional Entity's Bylaws (and other governance documents, if applicable) satisfied the criterion, with references to the provisions in the Regional Entity's Bylaws (or other governance documents) that addressed the criterion. In light of the directives in the April 19 Order that Regional Entity Bylaws are Regional Entity rules that must be filed with the Commission for approval, NERC and the Regional Entities have agreed to change the format of Exhibit B to consist of (i) the five governance criteria (without discussion of how each criterion is addressed in the Regional Entity's Bylaws), (ii) a copy of the Regional Entity's current Bylaws, and (iii) a statement that NERC agrees the Regional Entity's Bylaws satisfy the five governance criteria.

Similarly, the format of Exhibit C previously consisted of a set of 34 common attributes, each followed by an explanation of how the Regional Entity's Standards Development Procedure satisfied the attribute, with references to the provisions in the Regional Entity's Standards Development Procedure that addressed the attribute. In light of the directives in the April 19 Order that Regional Entity Standards Development Procedures are Regional Entity rules that must be filed with the Commission for approval, NERC and the Regional Entities have agreed to change the format of Exhibit C to consist of (i) the 34 common attributes (without discussion of how each attribute is addressed in the Regional Entity's Standards Development Procedure), (ii)

Delegation Agreement with WECC and Texas RE. In the WECC Delegation Agreement filed on May 18, 2007, Exhibit B consisted of WECC's then-current Bylaws and Exhibit C consisted of WECC's then current Standards Development Procedure. With respect to Texas RE, as explained in §III.D.7 below, Exhibit B to its Amended and Restated Delegation Agreement continues to contain the relevant excerpts from the ERCOT Bylaws that satisfy the five governance criteria of Exhibit B. Additionally, the Texas RE Delegation Agreement filed on May 18, 2007, included the Texas RE Standards Development Procedure in Exhibit C and did not include the list of 34 "common attributes." This continues to be the case in the Amended and Restated Delegation Agreement as approved by the Texas RE Board.

a copy of the Regional Entity's current Standards Development Procedure, and (ii) a statement that NERC agrees the Regional Entity's Standards Development Procedure satisfies the 34 common attributes.

Exhibits B and C to the individual delegation agreements filed with the Commission in November 2006 reflected NERC's determinations and judgment that the bylaws and standards development procedures of each Regional Entity satisfied the relevant criteria under §215 of the FPA and Part 39 of the Commission's regulations for the Regional Entity to be delegated authority and to be capable of proposing regional reliability standards and regional variances from NERC's Reliability Standards. The Commission agreed with NERC's assessment by approving the individual delegation agreements in the April 19 Order, subject to the Regional Entity-specific directives in that Order (which are being responded to in this filing). NERC has reviewed the Bylaws that are now included in the Amended and Restated Delegation Agreement with each Regional Entity and determined that they satisfy the five governance criteria specified in Exhibit B. Similarly, NERC has reviewed the Standards Development Procedures that are now included in the Amended and Restated Delegation Agreement with each Regional Entity and determined that they satisfy the 34 common attributes specified in Exhibit C.

Section IV.C of this filing describes, on a paragraph-by-paragraph basis, how NERC and each Regional Entity have addressed the specific directives in the April 19 Order concerning each Regional Entity Delegation Agreement.

1. Delegation Agreement with Florida Reliability Coordinating Council

Attachment 4 contains clean and redlined versions of the Amended and Restated Delegation Agreement between NERC and FRCC. It also contains, as supporting documents, (i) redlined versions of the current FRCC Bylaws and Regional Reliability Standard Development

Procedure against the versions of these documents in effect at the time the delegation agreements were originally filed with the Commission, and (ii) a redlined version of the FRCC CMEP and Hearing Procedure against the NERC uniform CMEP and Hearing Procedure (showing largely non-substantive differences, such as insertion of references to “FRCC” throughout the documents). NERC has reviewed the FRCC Bylaws and Regional Reliability Standard Development Procedure which are now included in the NERC – FRCC delegation agreement in Exhibits B and C, respectively, and has determined that these FRCC documents satisfy the criteria set forth in Exhibit B and the common attributes set forth in Exhibit C, as well as the criteria in Section 215 of the FPA and the Commission’s regulations for adoption as Regional Entity rules. NERC has also reviewed the FRCC CMEP and Hearing Procedures, including the deviations adopted by FRCC, and has determined that these documents are acceptable and should be adopted as Regional Entity rules.

2. Delegation Agreement with Midwest Reliability Organization

Attachment 5 contains clean and redlined versions of the Amended and Restated Delegation Agreement between NERC and MRO. It also contains, as supporting documents, redlines of the MRO Bylaws and Standards Process Manual. MRO has adopted the revised NERC uniform CMEP and Attachment 2 – Hearing Procedures, without deviation, and has also adopted the revised Exhibit E to the Amended and Restated pro forma Delegation Agreement. NERC notes that since the Delegation Agreements were originally filed with the Commission, MRO has amended its Bylaws to eliminate a provision for alternate Board members, in order to comply with Delaware law. NERC has reviewed the MRO Bylaws and Standards Process Manual which are now included in the NERC – MRO delegation agreement in Exhibits B and C, respectively, and has determined that these MRO documents satisfy the criteria set forth in

Exhibit B and the common attributes set forth in Exhibit C, as well as the criteria in Section 215 of the FPA and the Commission's regulations for adoption as Regional Entity rules.

3. Delegation Agreement with Northeast Power Coordinating Council

Attachment 6 contains clean and redlined versions of the Amended and Restated Delegation Agreement between NERC and NPCC. It also contains, as supporting documents, redlined versions of the NPCC Bylaws and NPCC Regional Reliability Standards Development Procedure. In addition to changes made to the NERC-NPCC Delegation Agreement in response to directives in the April 19 Order (discussed in §IV.C.4 below), changes have been made throughout the Amended and Restated NERC-NPCC Delegation Agreement to reflect the merger of NPCC: CBRE into NPCC, with NPCC the surviving entity (see footnote 6 above). Further, Exhibit D to the Delegation Agreement has been revised to reflect in greater detail the roles of the NPCC Compliance Committee and the NPCC compliance staff in the implementation of the Compliance Monitoring and Enforcement Program. Finally, Exhibit E to the Delegation Agreement has been revised to include information on the separate budget and separate funding mechanism for non-statutory services provided by NPCC (Criteria Services). NERC has reviewed the NPCC Bylaws and Regional Reliability Standards Development Procedure which are now included in the NERC – NPCC Delegation Agreement in Exhibits B and C, respectively, and has determined that these NPCC documents satisfy the criteria set forth in Exhibit B and the common attributes set forth in Exhibit C, as well as the criteria in Section 215 of the FPA and the Commission's regulations for adoption as Regional Entity rules.

4. Delegation Agreement with ReliabilityFirst Corporation

Attachment 7 contains clean and redlined versions of the Amended and Restated Delegation Agreement between NERC and ReliabilityFirst. It also contains, as supporting

documents, redlined versions of the Reliability*First* Bylaws and Regional Standard Development Procedure, and a redlined version of the Reliability*First* Hearing Procedure against the revised NERC uniform Hearing Procedures (Attachment 2 to the revised NERC uniform CMEP). The revised Reliability*First* Regional Standard Development Procedure is still subject to review and approval by the Reliability*First* Board of Directors (scheduled to occur on December 5, 2007), and therefore the Regional Standard Development Procedure included in Exhibit B to the Amended and Restated Delegation Agreement is labeled “Draft.” In Exhibit D to the Delegation Agreement, Reliability*First* has adopted the revised NERC uniform CMEP without exception, but has adopted a number of deviations to Attachment 2 - Hearing Procedures to the revised uniform CMEP. These deviations are identified in §1.2 of Exhibit D to the Amended and Restated Delegation Agreement.

NERC has reviewed the Reliability*First* Bylaws and Regional Standard Development Procedure which are now included in the NERC – Reliability*First* Delegation Agreement in Exhibits B and C, respectively, and has determined that these Reliability*First* documents satisfy the criteria set forth in Exhibit B and the common attributes set forth in Exhibit C, as well as the criteria in Section 215 of the FPA and the Commission’s regulations for adoption as Regional Entity rules. NERC has also reviewed the Reliability*First* Hearing Procedures, including the deviations adopted by Reliability*First*, and has determined that these Hearing Procedures are acceptable and should be adopted as Regional Entity rules.

5. Delegation Agreement with SERC Reliability Corporation

Attachment 8 contains clean and redlined versions of the Amended and Restated Delegation Agreement between NERC and SERC. It also contains, as supporting documents, redlined versions of SERC’s Bylaws and SERC’s Regional Reliability Standard Development

Procedure. In Exhibit D to the Amended and Restated Delegation Agreement, SERC adopts the revised NERC uniform CMEP including Attachment 2 – Hearing Procedures, without any deviations. Section 2.0 of Exhibit D has been modified to clarify that within SERC, the hearing body may be a subset of the Board Compliance Committee, as appointed by the chairman of that committee, such that (i) the hearing body shall comprise a minimum of 50% of the Compliance Committee members and (ii) no two sectors can control and no one sector can veto the actions by the hearing body.

In addition to the changes to the Amended and Restated Delegation Agreement and to the SERC Bylaws and Regional Reliability Standard Development Procedure necessary to address the directives in the April 19 Order, SERC has made a number of administrative modifications to its Bylaws and Regional Reliability Standard Development Procedure:

Administrative Modifications to the SERC Bylaws

- Article 1.1: Revised to reflect SERC location is now Charlotte, North Carolina.
- Article 4.1(j): Deleted as no longer relevant after reliability standards were approved by the Commission, to be effective June 18, 2007.
- Article 4.2: Updated the sub-region names.
- Article 5.3: Clarified administrative requirements for setting dates and announcing a board meeting.
- Article 6.6: Clarified responsibility for approving compensation of SERC president.
- Article 6.7: Clarified responsibility for approving compensation of SERC vice-president.
- Article 8.5: Added a reference to the SERC Regional Reliability Standard Development Procedure.
- General: Revised Bylaws to remove gender-specific references.

Administrative Modifications to the SERC Regional Reliability Standard Development Procedure

- General: Made minor edits to clarify and update the language of the procedure.

- Section 2: Deleted reference to Standards Committee approving standards, as they are now to be approved by an open ballot pool.
- Section 2: Updated the description of the SERC subgroup that is responsible for drafting the standard, to clarify the openness of participation on this team.
- Section 3.2: Clarified the options for accepting or remanding a Standard Authorization Request proposing a regional reliability standard.
- Section 3.4: Clarified the posting requirements for a proposed standard to include neighboring regions.
- Sections 3.6, 3.7 and 3.8: Clarified posting requirements.
- Sections 3.9, 3.10 and 3.11: Modified the voting process to use an open ballot body.
- Appendix A: Added an open ballot pool model for voting on regional reliability standards.
- Appendix B.5: Clarified responsibilities and steps and responding to requests for clarification on the meaning of standards.

NERC has reviewed the SERC Bylaws and Regional Reliability Standard Development Procedure which are now included in the NERC – SERC Delegation Agreement in Exhibits B and C, respectively, and has determined that these SERC documents satisfy the criteria set forth in Exhibit B and the common attributes set forth in Exhibit C, as well as the criteria in Section 215 of the FPA and the Commission’s regulations for adoption as Regional Entity rules.

6. Delegation Agreement with Southwest Power Pool, Inc.

Attachment 9 contains clean and redlined versions of the Amended and Restated Delegation Agreement between NERC and SPP. It also contains, as supporting documents, redlined versions of the SPP Bylaws and Regional Reliability Standard Development Procedure. In Exhibit D, SPP has accepted the NERC uniform CMEP without deviation. NERC has reviewed the SPP Bylaws and Standards Development Procedures which are now included in the NERC – SPP delegation agreement in Exhibits B and C, respectively, and has determined that these SPP documents satisfy the criteria set forth in Exhibit B and the common attributes set

forth in Exhibit C, as well as the criteria in Section 215 of the FPA and the Commission's regulations for adoption as Regional Entity rules.

7. Delegation Agreement with Texas Regional Entity, a division of ERCOT

Attachment 10 contains clean and redlined versions of the Amended and Restated Delegation Agreement between NERC and Texas RE. Because the Texas RE Delegation Agreement filed on May 18, 2007, included the Texas RE Standards Development Procedure in Exhibit C, the redlined version of the Amended and Restated Delegation Agreement includes a redlined version of the Texas RE Standards Development Procedure in Exhibit C. **Attachment 10** also includes, as supporting documents, a redlined version of the ERCOT Bylaws and a redline of the Texas RE Hearing Procedures against the revised NERC uniform Hearing Procedures (Attachment 2 to the uniform CMEP). As the Commission is aware (see P 253 of the April 19 Order), the PUCT is the hearing body for Texas RE and therefore the Texas RE Hearing Procedures incorporate requirements of the PUCT that are not reflected in the NERC uniform Hearing Procedures.

Exhibit B to the Amended and Restated NERC-Texas RE Delegation Agreement, as approved by the ERCOT Board, consists of the five governance criteria and explanations of how the ERCOT Bylaws and other governance documents satisfy these criteria, with the ERCOT Bylaws included as an additional attachment for information. As discussed in the NERC-Texas RE response to PP 245 of the April 19 Order (*see* §IV.C.2 below), the ERCOT Bylaws address topics that go beyond Texas RE's performance of its NERC-delegated functions as a Regional Entity, and should not be subject to filing with and approval by the Commission as Regional Entity rules when changes are made to unrelated provisions. Therefore, ERCOT and Texas RE

are requesting that the Commission approve only the provisions of the ERCOT Bylaws quoted or cited in Exhibit B to the Delegation Agreement as Regional Entity rules.

NERC has reviewed the provisions of the ERCOT Bylaws cited in Exhibit B to the NERC - Texas RE Amended and Restated Delegation Agreement, and Standards Development Procedure which are included in the Amended and Restated Delegation Agreement in Exhibit C, and has determined that these provisions satisfy the criteria set forth in Exhibit B and the common attributes set forth in Exhibit C, as well as the criteria in Section 215 of the FPA and the Commission's regulations for adoption as Regional Entity rules. NERC has also reviewed the Texas RE Hearing Procedures document and has determined that it is acceptable and should be adopted as Regional Entity rules.

8. Delegation Agreement with Western Electricity Coordinating Council

Attachment 11 contains clean and redlined versions of the Amended and Restated Delegation Agreement between NERC and WECC. As was the case in the NERC-WECC Delegation Agreement previously filed with the Commission, the Amended and Restated NERC-WECC Delegation Agreement includes the WECC Bylaws in Exhibit B, the WECC Standards Procedure in Exhibit C, and the WECC Compliance Monitoring and Enforcement Program in Exhibit D. Redlines of these documents to the prior versions are included in Exhibits B, C and D of the redlined version of the Amended and Restated Delegation Agreement. **Attachment 11** also includes, as supporting documents, (i) a redlined version of the Amended and Restated NERC-WECC Delegation Agreement against the Amended and Restated *pro forma* Delegation Agreement; (ii) the WECC Compliance Hearing Body Charter; (iii) a redlined version of the WECC CMEP against the revised NERC uniform CMEP²⁰; (iv) a table showing the provisions in

²⁰This redline does not include a redline of the WECC Hearing Procedures against the revised

the WECC Hearing Procedures that have been revised to address compliance with directives in the April 19 Order (compliance with the WECC-specific directives is addressed on an item-by-item basis in §IV.C.8 below); and (v) an annotated version of the WECC Hearing Procedures included in Exhibit D to the previously-filed NERC-WECC Delegation Agreement identifying the sections of the revised WECC Hearing Procedures where provisions of the previous version of the Hearing Procedures are now included.

The WECC Bylaws that are included in Exhibit B to the Amended and Restated WECC Delegation Agreement incorporate a number of revisions that WECC has made for reasons other than compliance with directives in the April 19 Order. Some of these other revisions relate to WECC's performance of its delegated Regional Entity functions and some do not. All of these revisions have been included in the WECC Bylaws submitted with this filing in order to provide the complete, current version of the WECC Bylaws so that the Commission can see the entire current document. However, so that the scope of this filing will not be unduly expanded beyond its primary purpose, *i.e.*, responding to the April 19 Order, a separate filing will be made with the Commission to request approval of WECC Bylaws revisions that have not been made specifically for the purpose of compliance with the April 19 Order.

As discussed above in §III.B.2, the extensive number of directives in the April 19 Order led NERC and the Regional Entities to comprehensively revise and reformulate Attachment 2 – Hearing Procedures to the NERC uniform CMEP. That process, which took place over several months, was intended to (1) incorporate the Commission-required changes, (2) include those

NERC uniform Hearing Procedures (Attachment 2 to the CMEP), due to the fact that the NERC uniform Hearing Procedures have been comprehensively revised. In addition to changes that have been made to the WECC CMEP in response to WECC-specific directives in the April 19 Order, other changes have been made to the WECC CMEP to conform to the revised NERC uniform CMEP, all as reflected in this redlined document.

aspects of the CMEP Hearing Procedures that were not required to be changed, and (3) reflect the greater level of detail and specificity in the Hearing Procedures indicated by the Commission's directives. During that process, WECC decided to develop a set of procedures that were different than the procedures being drafted by NERC and the Eastern Interconnection Regional Entities. WECC's decision to do so was based on its specific need to accommodate efficiently a level of enforcement activity that is expected to be significant, thereby placing a premium on simplicity and flexibility. In addition, WECC sought to organize its Hearing Procedures in a manner that more closely resembled the Commission's rules of procedure, rather than those of the National Association of Securities Dealers, because WECC's hearing officers are more familiar with the Commission's rules.

NERC and WECC believe the existence of two sets of hearing procedures does not conflict with the Commission's goal of consistency across the Regional Entities, because (as discussed below) there are few significant substantive differences between the two sets of Hearing Procedures.²¹ As a result, the two sets of Hearing Procedures will not be burdensome for Registered Entities located in both interconnections.

The WECC Hearing Procedures incorporate all the provisions required by the April 19 Order concerning the NERC uniform Hearing Procedures. **Attachment 11** includes, as a supporting document, a table identifying where each such directive in the April 19 Order has been addressed in the WECC Hearing Procedures. **Attachment 11** also includes, as an additional supporting document, an annotated copy of the former WECC CMEP Attachment 2 identifying where its provisions are addressed in the revised WECC Hearing Provisions.

²¹ As noted in §III.D.7, the Texas RE also employs Hearing Procedures that differ from the uniform Hearing Procedures, due to the need to comply with PUCT requirements.

There are few substantive differences between the WECC Hearing Procedures and the revised NERC uniform Hearing Procedures. The primary differences between them relate to (1) use of the procedures for registration or certification disputes, and (2) elimination of provisions relating to shortened procedures.²²

The WECC Hearing Procedures include registration and certification disputes because it is likely that a number of disputes concerning these matters will arise. Although certain matters may merely involve whether an entity meets the size or interconnection criteria under the NERC Compliance Registry Criteria, other matters may involve whether an entity or class of entities has a material impact on the reliability of the bulk power system. The determination of such matters is likely to turn on the resolution of factual disputes. A complete factual record would therefore be helpful in connection with the review by NERC and, ultimately, the Commission, of such determinations. WECC's Hearing Procedures would be used, where invoked, to facilitate the registration determinations to be forwarded (or appealed) to NERC.²³

²² Another difference reflects the fact that the members of the WECC Hearing Panel, assigned to render a decision in any specific proceeding, will be chosen from a larger Compliance Hearing Body. *See* §1.1.4 and §1.8.1 of the WECC Hearing Procedures. The standards for the selection of each Hearing Panel are identified in the Compliance Hearing Body Charter, which is included as a supporting document in **Attachment 11**. Section 1.8.1 provides that the composition of the Hearing Panel shall assure that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Panel, as specified in P 153 of Order No. 672. This requirement is implemented by the requirement of the Compliance Hearing Body Charter that “[e]ach panel shall be balanced between CHB members from Class A [non-industry segments] and Class B [industry segments], and the Chair of the CHB shall appoint a majority of members from Class A including, where possible, at least one WECC non-affiliated director.” Compliance Hearing Body Charter at 2-3.

²³ Application of WECC's Hearing Procedures to the regional registration and certification process is consistent with the provisions of Section 500 of the NERC Rules of Procedure. As contemplated in that Section, NERC is delegating authority to WECC (to the extent delegation is necessary) to resolve registration and certification disputes, by means of inclusion of WECC's Hearing Procedures in Exhibit D to the Delegation Agreement. *See* NERC Rules of Procedure, Sections 501.3.1, 502.1.1, 503.1, 504.2.

With respect to elimination of provisions relating to shortened hearing procedures, in the April 19 Order, the Commission stated that the shortened hearing procedures included in §6.1 of the previous CMEP Attachment 2 must preclude *ex parte* communications and that NERC must either explain or delete the provisions permitting waiver of a transcript and testimony under oath.²⁴ WECC's procedures do not include any provision for shortened procedures because, without these features, it is unclear to WECC how a shortened procedure would be shorter than the otherwise applicable procedure.²⁵ In addition, to the extent a proceeding does not involve disputed issues of fact, it is likely that the provisions for summary disposition will achieve a result, from a timing perspective, similar to a shortened procedure.

Exhibit E to the Amended and Restated NERC-WECC Delegation Agreement incorporates several revisions in addition to those made in Exhibit E to the *pro forma* Delegation Agreement in response to directives in the April 19 Order. Two of the changes reflect corresponding changes to the *pro forma* Delegation Agreement. (1) The reference in Section 1 of Exhibit E to inclusion in WECC's budget of the costs of any approved regional advisory body has been deleted, because the Western Interconnection Regional Advisory Body files its budget with NERC separately. (2) A provision has been added to Section 1 stating that NERC may allow a departure from the requirement that Regional Entities follow the NERC system of accounts. Regional Entity balance sheet accounts, for instance, may not be uniform due to the different corporate structures among the regions. Finally, a reference to the June 1 deadline has been added to Section 2(3)(b), to be consistent with Section 2(3)(a).

²⁴ April 19 Order at P 159.

²⁵ In the event that there is a need for an expedited determination, WECC's Hearing Procedures provide the Hearing Officer or Compliance Hearing Body with authority to establish procedural deadlines that facilitate this result. See §§1.1.2, 1.5.2, 1.8.1(3) of the WECC Hearing Procedures..

NERC has reviewed the WECC Bylaws and Standards Development Procedures which are included in the Amended and Restated NERC – WECC Delegation Agreement in Exhibits B and C, respectively, and has determined that these WECC documents satisfy the criteria set forth in Exhibit B and the common attributes set forth in Exhibit C, as well as the criteria in Section 215 of the FPA and the Commission’s regulations for adoption as Regional Entity rules. NERC has also reviewed the WECC CMEP and Hearing Procedures documents and has determined that these WECC documents are acceptable and should be adopted as Regional Entity rules.

IV. SPECIFIC RESPONSES TO DIRECTIVES IN APRIL 19, 2007 ORDER

A. NERC Compliance Monitoring and Enforcement Procedures

1. Compliance Audits

April 19 Order, P 41: We find that NERC’s proposed compliance audit procedures satisfy the requirements of the *ERO Certification Order*. As discussed below, we also identify modifications to be addressed by NERC. As required by the *ERO Certification Order*, we find that NERC has included the necessary language in its audit procedures, at section 3.1.5, stating that no restrictions will be placed on the participation of Commission Staff in a compliance audit. We also find that NERC’s compliance audit procedures are generally consistent with GAO procedures.³⁷ However, we direct NERC to review annually whether any changes to the GAO Standards have occurred and to address in its annual audit plan whether any changes in its audit procedures are appropriate.

³⁷ Specifically, NERC’s audit procedures are based on the following GAO procedures: ¶ 3.03 through ¶ 3.32 (independence); ¶ 3.33 through ¶ 3.38 (professional judgment); ¶ 3.39 through 3.42 (competence); ¶ 3.45 through ¶ 3.48 (continuing professional education); ¶ 3.49 through ¶ 3.56 (quality control and assurance), and additional provisions addressing reporting and field work procedures.

NERC Response:

In connection with the development of its Annual Audit Plan pursuant to Section 3.1.2 of the CMEP, NERC will conduct annual reviews to determine whether any changes to the GAO Standards have occurred, and if any such changes have occurred, will address in its annual audit plan whether any changes to NERC’s audit procedures are appropriate as a result.

April 19 Order, P 42: With respect to section 3.1.1, we note that a compliance audit team will be authorized to conduct an audit subject to NERC “audit guides.” However, NERC has not filed these guides for our approval, nor is it clear whether these audit guides have as yet been developed by NERC. Accordingly, we direct NERC to submit the audit guides and to explain whether they should be incorporated into the Uniform Compliance Program.

NERC Response:

The audit guides (also referred to as Reliability Standard Audit Worksheets) are posted on the NERC web site²⁶ and revisions to the audit guides will be posted as they are made. As a result, the current versions of the audit guides will be readily available to Registered Entities and other interested entities. A sentence has been added to Section 3.1 of the CMEP stating that the audit guides will be posted on the NERC web site. The Reliability Standard Audit Worksheets were separately provided to the Office of Electric Reliability on October 25, 2007 (and, as noted, are available at the web address provided in footnote 26).

The audit guides should not be incorporated into the CMEP. The audit guides are essentially procedural tools for the use of Compliance Audit teams. These documents do not create or add or impose substantive requirements to the Reliability Standards, the NERC ROP or the uniform CMEP. The substantive requirements (including recordkeeping requirements) are contained in the Commission-approved Reliability Standards against which Registered Entities will be audited for compliance. The audit guides should not be deemed to fall within the definition of an “Electric Reliability Organization Rule” in 18 C.F.R. §39.1, as they are not “the bylaws, a rule of procedure or other organizational rule or protocol of the Electric Reliability organization”.

Further, NERC expects to revise audit guides on an ongoing basis based on review of revisions to the General Accountability Office Auditing Standards (as specified in P 41 of the

²⁶http://www.nerc.com/~comply/auditor_resources.html

April 19 Order) and on feedback from Compliance Audit teams and others as to the usefulness of these documents in conducting Compliance Audits. Any changes to the process whereby corresponding change to the uniform CMEP or to the ROP were required would have to occur in accordance with Section 1400 of the ROP, requiring a substantial amount of time to complete. Further, the CMEP is Appendix 4C to the NERC ROP and therefore is an ERO rule, revisions to which must be filed with and approved by the Commission pursuant to §215(f) of the FPA and 18 C.F.R. §39.10 before the revised version can become effective. From a practical perspective, incorporating the audit guides into the CMEP would make the audit guides ERO rules as well and would bring them within the prior review and approval requirements of §215(f) and 18 C.F.R. §39.10. Thus, including the audit guides in the uniform CMEP would result in a delay and would unduly restrict NERC's flexibility in making and implementing required or improved auditing tools and techniques.

April 19 Order, P 43: We also agree with GSOC that the footnote to section 3.1.1 appears to be circular. Accordingly, NERC must consider a clarification.

NERC Response:

Footnote 1 to Section 3.1.1 has been revised to state that the Compliance Audit process normally completes within sixty (60) days of the completion of on-site audit work at the Registered Entity's site.

April 19 Order, P 45: Section 3.1.3 provides that in addition to a scheduled audit, an unscheduled audit may be conducted "if reasonably determined to be necessary" to ensure compliance with a reliability standard. However, we do not construe this provision as allowing an entity to challenge the decision to conduct such an audit, or as allowing the entity to prevent or fail to cooperate with such an audit. The decision to undertake such an audit should be within the discretion of NERC and the Regional Entities. Also, the Commission may direct NERC or a Regional Entity to undertake an audit at any time. Accordingly, we direct NERC to revise this provision. We also note that section 3.1.3 fails to provide that NERC and the Commission will receive notification of an unscheduled audit. Accordingly, we direct NERC to revise section 3.1.3 to include this requirement.

NERC Response:

Section 3.1.3 has been revised to provide that an unscheduled Compliance Audit of a Registered Entity shall be initiated by the Compliance Enforcement Authority or by NERC if directed to do so by the Commission. Section 3.1.3 has also been revised to require the Compliance Enforcement Authority to notify NERC and the Commission that an unscheduled Compliance Audit is being initiated.

April 19 Order, P 47: With respect to section 3.1.3, we agree with Xcel that an audited entity should be entitled to receive sufficient advance notice of an unscheduled audit in order to assess and, if it deems necessary, contest the composition of the audit team. On the other hand, too much advance notice would defeat the purpose of an “unscheduled” audit. Accordingly, NERC must have the discretion to consider the appropriate balance that will be required regarding these interests and to propose any revisions it may deem necessary.

NERC Response:

Section 3.1.3 has been revised to state that (i) the Registered Entity shall receive at least ten business days advance notice that an unscheduled Compliance Audit is being initiated, (ii) the notice will include identification of the members of the Compliance Audit team, and (iii) the Registered Entity must make any objections to the composition of the Compliance Audit Team (which must be based on failure to meet the criteria specified in Section 3.1.5) at least five business days prior to the start of on-site audit work for the unscheduled Compliance Audit. The five business day time period has also been added to Section 3.1.5. These time frames appropriately balance the competing interests of not unduly delaying the start of an unscheduled Compliance Audit when it has been determined that one should be conducted, and allowing the Registered Entity an adequate amount of time to review, and register any permitted objections to, the composition of the Compliance Audit team.

April 19 Order, P 50: We agree with Xcel and AMP-Ohio that an audited entity should have the right to challenge the composition of the audit team in every circumstance, even where the

audit team member has been appointed less than 15 days in advance of the audit. We direct NERC to revise this policy, as may be necessary.

NERC Response:

To provide adequate time frames, Section 3.1.5 has been revised to state that the general requirement that the Registered Entity must submit any objections concerning members of the Compliance Team no later than fifteen days prior to the start of on-site audit work, does not apply (i) where an audit team member has been appointed less than twenty days prior to the start of on-site audit work, or (ii) in the case of an unscheduled Compliance Audit pursuant to Section 3.1.3. If an audit team member is appointed less than twenty days before the start of on-site audit work, the Registered Entity will have five business days after receiving notice of the appointment to submit any objections. In the event of an unscheduled Compliance Audit, the Registered Entity must submit any objections concerning the composition of the audit team no less than five business days prior to the start of on-site audit work for the unscheduled Compliance Audit.

April 19 Order, P 51: We also agree with EEI that a revision is warranted, at section 3.1.6, prohibiting information regarding an alleged violation resulting from a compliance audit from being released to the public on the basis of the compliance enforcement authority's finding alone. Consistent with section 39.7(b)(4) of our regulations, an alleged violation may not be publicly disclosed until after NERC submits a notice of penalty to the Commission, or the alleged violation is resolved by an admission or a settlement. Accordingly, we direct NERC to make this revision.

NERC Response:

Revisions have been made in the third paragraph of Section 3.1.6 to provide that if the audit report identifies Alleged Violations of Reliability Standards, the final audit report (or pertinent part thereof) shall not be released to the public by NERC or the Compliance Enforcement Authority until either (i) NERC has submitted a notice of penalty to the

Commission, or (ii) the Alleged Violation(s) have been admitted by the Registered Entity or resolved by a settlement agreement with the Compliance Enforcement Authority.

2. Investigations

April 19 Order, P 66: In the *ERO Certification Order*, the Commission required NERC to avoid the possibility of multiple, overlapping investigations. NERC, in response, at section 3.4, provides that it may assume the “leadership” of an investigation and that it will only do so for “good cause.” However, NERC’s proposal may be too restrictive under certain circumstances. Specifically, NERC should not be required to explain its decision to control an investigation to a Regional Entity’s satisfaction, nor should the Regional Entity be entitled to protest or appeal that determination. Instead, NERC must retain discretion in deciding whether to assume control of investigations to assure consistency in investigative processes and to coordinate investigations into matters that may cross Regional Entity boundaries. In addition, NERC may assume leadership of the compliance violation investigation where the possible violation is: (i) related to Regional Entities or one of its affiliates, divisions, committees or subordinate structures; or (ii) where the Regional Entity determines that it cannot conduct the review.⁴⁷ Accordingly, we direct NERC to revise this aspect of section 3.4. We also remind NERC and the Regional Entities that the Commission retains the authority, at all times, to order the referral of any investigation directly to the Commission.⁴⁸

⁴⁷ This reservation of authority is similar to section 3.8 of the Uniform Compliance Program, where a complaint provides the underlying basis for a compliance violation investigation. *See infra* section IV(B)(5).

⁴⁸ *ERO Certification Order*, 116 FERC ¶ 61,062 at P 380.

NERC Response:

In Section 3.4, the qualifying phrase “for good cause” has been deleted from the sentence, “NERC reserves the right to assume the leadership of a Compliance Violation Investigation.” Footnote 4 to Section 3.4 has been added listing examples of situations in which NERC may decide to lead a Compliance Violation Investigation: to assure consistency in investigative processes; to coordinate investigations that may cross Regional Entity boundaries; where the possible violation is related to the Regional Entity or one of its affiliates, divisions, committees or subordinate structures; or where the Regional Entity determines it cannot conduct the Compliance Violation Investigation. Further, a sentence has been added to Section 3.4

stating that the Regional Entity shall not be entitled to appeal NERC's decisions to lead a Compliance Violation Investigation.

To make explicit the authority of NERC and of Applicable Governmental Authorities to initiate Compliance Violation Investigations, Section 3.4 has been revised to state that a Compliance Violation Investigation may be initiated at any time by NERC, the Commission or another Applicable Governmental Authority (as well as by the Compliance Enforcement Authority).

April 19 Order, P 68: Section 3.4.1, step 1, obligates the Regional Entity to provide, in its notice of investigation to a registered entity, its reasons for the investigation. However, this proposal is inconsistent with the Commission's holding in the *ERO Certification Order* that an entity under investigation need not be given, at the outset of the investigation, "a description of its scope and nature."⁴⁸ Accordingly, we direct NERC to amend step 1 to state that "[w]ithin two (2) business days of the decision to initiate a Compliance Violation Investigation, the Regional Entity: (i) notifies the registered entity of initiation of the investigation, its initial scope and the requirement to preserve all records and information relevant to the investigation and, where appropriate, the reasons for the investigation; and (ii) notifies NERC of the initiation of the investigation and the reasons for it." While the Regional Entity may, at its discretion, notify the registered entity of the reasons for its investigation, the investigation, as it unfolds, need not be limited to this scope.

⁴⁸ *Id.* at P 382. While this information may be appropriate to provide in some cases, in other cases, it may not be appropriate or necessary. However, in all cases, we agree that a Regional Entity must notify NERC of the reasons for the investigation.

NERC Response:

Language consistent with the quoted language in P 68 has been added to Section 3.4.1. (The language added is not identical to the quoted language in P 68 due to the need to use terminology consistent with that used throughout the CMEP.) Additionally, a sentence has been added to Section 3.4.1 stating that while the Compliance Enforcement Authority may, at its discretion, notify the Registered Entity of the reasons for the investigation, the investigation as it unfolds need not be limited to this scope.

April 19 Order, P 69: We find that section 3.4.1, step 3 warrants clarification to make clear that objections to the composition of the investigation team may not include objections to the participation by NERC staff or Commission Staff. We also direct NERC to correct an apparent drafting error, at section 3.4.1, step 4, which states that an entity being investigated must provide its objections prior to the start of on-site “audit work.” As corrected, this requirement will relate to the investigative process, not the audit process.

NERC Response:

Language has been added to step 3 in Section 3.4.1 stating that the Registered Entity may not object to participation by NERC, by Commission Staff or by the Staff of another Applicable Governmental Authority on the Compliance Violation Investigation team.

Step 4 in Section 3.4.1 has been revised to state that the Registered Entity must make any objections to members of the Compliance Violation Investigation team within ten business days after receiving notification of the investigation.

April 19 Order, P 70: We believe that NERC must provide in its investigative procedures for an entity to provide a response under oath to a request for documents or information or to provide testimony under oath, when appropriate in the discretion of the compliance enforcement authority. Because the Uniform Compliance Program provides for determinations of violations that could lead to substantial penalty assessments, Regional Entities and NERC must have available a mechanism to ensure that factual submissions and statements by witnesses bearing upon these determinations possess a high degree of veracity. We direct NERC to revise section 3.4 accordingly.

NERC Response:

A new step (step 8) has been added in Section 3.4.1 stating that the Compliance Enforcement Authority may require the Registered Entity (i) to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity’s responses to the Compliance Enforcement Authority’s requests for documents and information; and (ii) to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath concerning the matters under investigation.

3. Mitigation Plans and Remedial Actions

April 19 Order, P 87: However, we find that section 6.3 is unclear regarding the effect of a satisfactorily-completed mitigation plan on violations that occur during the plan's implementation period. Section 6.3 provides that, upon a registered entity's satisfactory and timely completion of an approved mitigation plan, the compliance enforcement authority will notify the entity that any findings of "violations of the applicable Reliability Standard" during the implementation period have been waived. In this instance, no penalties or sanctions will apply. By contrast, when a mitigation plan extends beyond the next reporting or assessment period for a violation it is to mitigate, the last sentence of the first paragraph of section 6.3 waives sanctions for "any violation," without the modifier: "of the applicable Reliability Standard," that occurs during the implementation period if the plan is satisfactorily completed." We direct NERC to revise this sentence to refer to "any violation of the applicable Reliability Standard."

NERC Response:

The revision specified in P 87 has been made in the last sentence of the first paragraph of Section 6.3.

April 19 Order, P 88: We also find that sections 6.3 and 6.4 do not specifically address whether the rejection of an entity's proposed mitigation plan places the entity in the position in which it would have been had it not submitted a mitigation plan. Because section 6.3 discusses waivers of penalties or sanctions in the context of an accepted mitigation plan, we conclude that rejection of an entity's proposed mitigation plan should not immunize the entity from any penalties or sanctions for such violations. Accordingly, we require NERC to submit an appropriate clarification regarding this requirement.

NERC Response:

Language has been added in Section 6.3 (last paragraph) stating that if a Mitigation Plan submitted by a Registered Entity is rejected by the Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any penalties or sanctions imposed for such violations. In the last sentence of Section 6.4, revisions have been made to effectuate the same provision.

April 19 Order, P 92: We agree with TAPS that it would be helpful for a notice of an alleged violation to inform the registered entity of its right to submit a mitigation plan, without thereby waiving its right to contest that notice. Accordingly, we direct NERC to make this clarification.

NERC Response:

In Section 5.1, Notification to Registered Entity of Alleged Violation, the following has been added to the contents of a notice of Alleged Violation: “notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity’s right to contest the Alleged Violation and/or the proposed penalty or sanction.”

April 19 Order, P 93: We find that NERC’s section 7 procedures, regarding the issuance of remedial action directives, warrant modification regarding the notice of these actions given to the registered entity.⁶⁴ As EEI and KCPL correctly point out, section 7 does not expressly require a compliance enforcement authority to provide actual notice to a registered entity of a remedial action directive prior to the expiration of the two-business day deadline for contesting the directive. Nor does NERC include a requirement that a remedial action directive list, in that notice, the violations or possible violations giving rise to the directive, or include any discussion of the factual basis for the directive. Accordingly, we direct NERC to submit modifications to its section 7 procedures to address these concerns.

⁶⁴ We note that in the *ERO Certification Order*, the Commission required NERC to establish procedures for notifying an entity that it may be subject to remedial action, including information regarding each specific reliability standard that the entity appears to be violating or may violate in the near future, and the factual basis for the entity to undertake the remedial action. *See ERO Certification Order*, 116 FERC ¶ 61,062 at P 366. The Commission also stated that NERC should include in these procedures effective methods for providing timely notice of remedial action directives to affected entities, for the dual purpose of ensuring fairness to entities that receive remedial section [sic; action] directives and preventing instances in which needed corrective actions are not performed timely as a result of a communications failure. In particular, the Commission required NERC to provide for multiple avenues of notice, especially when immediate corrective action is needed, and for notifying the Commission of each remedial action. *Id.*

NERC Response:

Section 7.0 has been revised to provide that a Remedial Action Directive must be provided by a notice to the Registered Entity and that the notice must include (i) a list of the

violations or possible violations of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) a deadline for compliance and (iv) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions. Section 7.0 has also been revised to state that the Registered Entity may contest the Remedial Action Directive by giving written notice to the Compliance Enforcement Authority within two business days after receipt of the notice of the Remedial Action Directive.

April 19 Order, P 94: Section 7 also permits a registered entity to decide not to implement a remedial action directive while an appeal relating to this directive remains pending before the compliance enforcement authority.⁶⁵ However, NERC's hearing procedures, at attachment 2, section 10, permit the hearing body to rule, in a summary written decision, that the registered entity must comply with a remedial action directive, without discussion of that entity's rights under section 7. To avoid confusion regarding these related provisions, we direct NERC to make appropriate clarifications.

⁶⁵ Failure to implement a remedial action directive could subject a registered entity to an action for injunctive relief by NERC, a Regional Entity or the Commission. *See ERO Certification Order*, 116 FERC ¶ 61,062 at P 367.

NERC Response:

The sixth paragraph of Section 7.0 has been revised to state that the Registered Entity's issuance of notice that it is contesting a Remedial Action Directive, followed by participation in the hearing process for contesting Remedial Action Directives set forth in Section 1.9 of Attachment 2, Hearing Process, constitutes the Registered Entity's right to appeal the Remedial Action Directive. Section 1.9.2 of the Hearing Process provides an expedited hearing procedure to be used solely where a Registered Entity contests a Remedial Action Directive. In light of the Registered Entity's right not to implement a Remedial Action Directive – which is issued only to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability

Standard violation when immediately necessary to protect the reliability of the bulk power system from an imminent threat (Section 1.1.18 of the CMEP) – the hearing process for contests of Remedial Action Directives in Section 1.9.2 is intended to be more streamlined and expeditious than the regular hearing process in Attachment 2, in order to obtain expeditious resolutions of contests of Remedial Action Directives.

4. Settlement Process

April 19 Order, P 104: We accept section 5.4 of the Uniform Compliance Program. We also identify modifications to be addressed by NERC. We find that, in general, section 5.4 sets out procedures that will encourage settlements when appropriate, consistent with the requirements of the *ERO Certification Order*. However, the time period specified in section 5.4 during which settlement may be pursued warrants revision to include the period prior to the issuance of a notice of alleged violation. Accordingly, we direct NERC to modify section 5.4 to state that settlement negotiations may occur at any time until a notice of penalty is filed with the Commission or an applicable governmental authority.

NERC Response:

The first sentence of Section 5.4 has been revised to state that settlement negotiations may occur at any time, including prior to the issuance of a notice of Alleged Violation and sanction, until a notice of penalty is filed with the Commission or another Applicable Governmental Authority.

April 19 Order, P 105: To address TAPS' argument, we also direct NERC to modify section 5.4 regarding NERC's obligation to post confirmed violations, i.e., to clarify in section 5.4 that this posting obligation extends to both confirmed violations and settlements, whether or not the settlement includes an admission of a violation.⁷³ We also agree that NERC's postings should include a copy of the settlement or a description of its terms.

⁷³ As such, we reject FirstEnergy's argument that section 5.4 should be revised to provide that NERC post only confirmed violations. In the *ERO Certification Order*, we stated that an alleged violation will be treated as confidential until a notice of penalty is filed with the Commission, or resolved by an admission, settlement, or other negotiated disposition. See *ERO Certification Order*, 116 FERC ¶ 61,062 at P 402. See also section 18 C.F.R. 39.7(b)(4) (2006) (providing that NERC's authorization to post information about settlements is subject to a prohibition against public disclosure of a violation or alleged violation that relates to a cybersecurity incident or that would jeopardize Bulk-Power System reliability if publicly disclosed, unless the Commission otherwise directs).

NERC Response:

The last paragraph of Section 5.4 has been revised to state that NERC will publicly post the violation settled regardless of whether the settlement includes or does not include an admission of a violation, and that the posting shall include a copy of the settlement or a description of its terms. Additionally, a cross-reference has been added to Section 8.0 where postings of Confirmed Violations are addressed. (Section 8.0 states that NERC will publicly post each report it receives from a Regional Entity of a Confirmed Violation, together with any statement submitted by the Registered Entity, within five business days after the Regional Entity provides the report to NERC and the Registered Entity.)

5. Complaints

April 19 Order, P 117: In addition, the use of the term “Alleged Violation,” in section 3.8.2, in reference to the allegations made in an anonymous complainant is inconsistent with NERC’s defined terms and must be revised. An “Alleged Violation,” as defined in the Uniform Compliance Program, has reference to a potential violation that has been investigated by the compliance enforcement authority, not an unreviewed complaint.⁷⁹ Accordingly, we direct NERC to amend the second sentence of the first paragraph of section 3.8 so that after the numeral “(1)” it states “that is related to a Regional Entity, or its affiliates, divisions, committees or subordinate structures” and substitute “possible violation” for “Alleged Violation” in the context of section 3.8.2.

⁷⁹ The term alleged violation is defined at section 1.1.1 of the Uniform Compliance Program as “[a] potential violation for which the Compliance Enforcement Authority has completed its accuracy and completeness review and has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.”

NERC Response:

The phrase “that is related to a Regional Entity, or its affiliates, divisions, committees or subordinate structures” has been inserted in the second sentence of the first paragraph of Section 3.8. In Section 3.8.2, “Alleged Violation” has been replaced with “possible violation”.

6. Confidentiality

April 19 Order, P 126: Section 3.4 (and a corollary provision in the NERC Rules of Procedure) state, respectively, that all investigations are confidential and that all compliance investigations are to be non-public.⁸³ While this statement of policy is generally accurate, clarification would also be useful regarding the authority of the Commission to determine that a particular NERC or Regional Entity investigation (or information obtained in it) should be publicly disclosed. Accordingly, we direct NERC to make this clarification.

⁸³ See NERC Rules of Procedure at section 403.13 (“All compliance investigations are to be non-public unless NERC or regional entity determines a need to conduct a public investigation.”).

NERC Response:

The first sentence of the last paragraph of Section 3.4 has been revised to read as follows: “Compliance Violation Investigations are confidential, unless FERC directs that a Compliance Violation Investigation should be public or that certain information obtained in the Compliance Violation Investigation should be publicly disclosed.”

With respect to Section 403.13 of the ROP, due to subsequent revisions to Section 403 that NERC has filed and the Commission has approved, the language cited in footnote 83 of the April 19 Order is now in Section 403.14.²⁷ NERC is proposing to revise the first sentence of current Section 403.14 to state: “All compliance violation investigations are to be non-public unless NERC, the regional entity or FERC or another applicable governmental authority with jurisdiction determines a need to conduct a public investigation.”

7. Hearing Procedures

April 19 Order, P 146: First, we note that NERC’s attachment 2 hearing procedures do not expressly address or describe certain essential components of the administrative hearing process. As AMP-Ohio, GSOC, Progress Energy, and Xcel point out, for example, attachment 2 does not

²⁷Specifically, in its March 19, 2007 compliance filing in Docket No. RR06-1 in response to the Commission’s orders issued January 18 and March 9, 2007, NERC filed proposed revisions to Section 403 of the ROP. These revisions were approved in the Commission’s Order issued June 7, 2007, in Docket RR06-1-007. *North American Electric Reliability Corp.*, 119 FERC ¶61,248 (2007).

expressly address the allocation of the burden of persuasion for a finding of violation. Nor does attachment 2 expressly describe the standard of proof that will apply to determinations by the hearing bodies on these matters. Accordingly, we direct NERC to address these matters. NERC's hearing procedures, for example, must provide expressly that the compliance enforcement authority will have the burden of persuasion on the merits of an attachment 2 hearing. NERC must also expressly guarantee that the standard of proof in its adjudications will be the preponderance of the evidence.⁹⁵

⁹⁵ This is the standard of proof the Commission employs for imposition of remedies and sanctions. *See, e.g., Nantahala Power and Light Co.*, 19 FERC ¶ 61,152 at 61,276, n. 9 (1982), *citing Steadman v. SEC*, 450 U.S. 91 (1981).

NERC Response:

Revised Attachment 2 now contains the following provision in Paragraph 1.6.2 that is responsive to P 146: “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, opposing a Registered Entity’s Mitigation Plan, or requiring compliance with a Remedial Action Directive.” This provision is applicable whether the hearing is being conducted before a Regional Entity hearing body or before NERC.

April 19 Order, P 147: We also agree with AMP-Ohio, GSOC, Progress Energy, and Xcel that NERC should modify attachment 2 to address a potential disparity in the availability of discovery. Specifically, attachment 2, section 3 gives the compliance enforcement authority’s staff, compliance audit teams, and investigation teams wide-ranging tools to obtain information from registered entities pertaining to their compliance with reliability standards before deciding whether to issue a notice of alleged violation. However, attachment 2, while not precluding this right, establishes no specific authority for the registered entity to seek discovery from the compliance enforcement authority. Accordingly, we direct NERC to modify its attachment 2 procedures to address this concern.

NERC Response:

Revised Attachment 2 now contains, in Paragraph 1.5.7, detailed provisions obligating the Compliance Enforcement Authority Staff to make documents prepared or obtained by Staff in connection with the investigation that led to initiation of the proceeding, and not previously

provided to the Respondent, available for inspection and copying by the Respondent, within five days after issuance of the notice of hearing. Paragraph 1.5.7 also provides that documents received by the Staff after the initial inspection and copying must also be made available to the Respondent. Additionally, Paragraph 1.5.8 of Revised Attachment 2 now provides that “in addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods commonly used in civil courts, including requests for production of documents, written interrogatories, requests for admission, and depositions of witnesses under oath.” Paragraph 1.5.7 provides for the Hearing Officer to supervise and schedule all requested discovery, in accordance with the policies that (i) the opportunity to obtain full disclosure of all relevant and material documents and information shall be provided, (ii) a Participant shall be obligated to exercise due diligence in the conduct of discovery, and (iii) discovery shall not be employed by a Participant as a means of delay of the proceeding or to harass or burden any other Participant.

April 19 Order, P 148: Attachment 2, section 1 provides that the hearing body may rule on all procedural and discovery matters. However, without specific, codified rules to be applied in these cases, there could be the potential for arbitrary, inconsistent rulings. Moreover, these rulings may lead to disparate procedures among the Regional Entities and thus promote a lack of uniformity. Accordingly, we direct NERC to address this concern.

NERC Response:

Revised Attachment 2 now contains the following provisions, among others, that are responsive to P 148:

- detailed standards for the exercise of discretion (Paragraph 1.1.3);
- detailed provisions concerning the content and form of filings and the submission and service of documents (Paragraphs 1.2.1, 1.2.2, 1.2.3 and 1.2.4);
- rules concerning computations of time for required actions, granting of extensions of time and allowance to amend documents (Paragraphs 1.2.5, 1.2.6 and 1.2.7);
- the procedure by which a Registered Entity may request a hearing (Paragraph 1.3.1);

- required contents of the notice of hearing (Paragraph 1.4.1);
- a procedure for seeking interlocutory review of a Hearing Officer’s ruling (Paragraph 1.4.4);
- procedures and criteria for summary disposition of a matter (Paragraph 1.5.3);
- procedures and time periods for presenting and responding to motions (Paragraph 1.5.5);
- as noted in the response to P 147, detailed provisions concerning the Respondent’s right to inspection and copying of documents in the possession of Compliance Staff (Paragraph 1.5.7) and the availability of other discovery methods (Paragraph 1.5.8);
- provisions concerning the submission and exchange of prepared testimony and other written evidence prior to the evidentiary hearing (Paragraph 1.5.9);
- procedures for the conduct of the evidentiary hearing (Paragraph 1.6), including procedures and criteria for the admission of evidence, stipulations, taking of official notice, offers of proof and the order of examination of witnesses (Paragraphs 1.6.7 – 1.6.16);
- provisions for the submission of briefs and reply briefs, issuance of a Hearing Officer’s initial opinion, submission of briefs on exceptions and briefs in reply to exceptions, and oral argument (Paragraphs 1.7.1 – 1.7.7); and
- provisions specifying what shall constitute the record (Paragraph 1.7.9).

April 19 Order, P 149: We also note that attachment 2, section 5 provides for consultations with respect to discovery that, if unsuccessful, would be resolved by a determination made by the NERC compliance program officer.⁹⁶ However, while this process may be successful, in some cases, it may not be adequate in others, in the absence of guidelines, *i.e.*, specific rules on discovery. In addition, it may not be appropriate for these matters to be considered by the NERC compliance program officer after a hearing body has convened. Rather, at that time, it would be preferable to assign this role to the hearing body. Accordingly, we direct NERC to address these issues.

⁹⁶Attachment 2, section 5 states that “[t]he hearing body shall set a date for an initial conference within thirty (30) days after the date the hearing body is convened.” Attachment 2, section 5 further provides that “[a]t the initial conference, the hearing body shall establish specific procedures for the hearing including: (i) any procedures for exchange of additional documents, (ii) any written testimony; (iii) the hearing date(s), and (iv) dates for any briefs.”

NERC Response:

As noted in the response to P 147, revised Attachment 2 now contains detailed provisions on discovery in Paragraphs 1.5.7 and 1.5.8, and these sections provide for all discovery to be supervised and scheduled by the Hearing Officer.

April 19 Order, P 151: We agree with GSOC that NERC’s attachment 2 hearing procedures should also provide additional details regarding the composition and duties of the compliance enforcement authority hearing body. These details would be helpful in assuring that adjudications reached by these hearing bodies will comport with basic due process and will not be subject to inconsistency. For example, these procedures should address whether the entire hearing body, or only a subset of it, must vote, if not recused.⁹⁷ Further, to ensure that different practices do not arise on this point, all questions in a hearing shall be decided by a majority of the votes cast by a quorum of the hearing body. Accordingly, we direct NERC to address these matters.

⁹⁷See section 403.19 of the NERC Rules of Procedure.

NERC Response:

In revised Attachment 2, Paragraph 1.4.2 details the authority and responsibilities of the Hearing Officer, and Paragraph 1.4.3 details the authority of the Hearing Body. Additionally: (1) Regarding the composition of the Hearing Body, Paragraph 1.1.1 requires that “The composition of the [HEARING BODY], after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the [HEARING BODY] on any matter brought before it for decision.” (2) Paragraph 1.7.8 states that issuance of a final order by the Hearing Body “shall require (i) a quorum of the [HEARING BODY], which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the [HEARING BODY], and (ii) majority vote of the members of the [HEARING BODY] voting on the final order (which number of members voting shall not be less than a quorum).”

April 19 Order, P 155: However, we agree with AMP-Ohio that in the case of a prohibited *ex parte* communication between a party and a member of the hearing body or upon a specific showing of potential bias, another party to the hearing should be permitted to request recusal of the hearing body member. Accordingly, we direct NERC to adopt this requirement. However, not all prohibited *ex parte* communications need result in recusal, such as prohibited communications that are *de minimus* or inadvertent.

NERC Response:

In revised Attachment 2, Paragraph 1.4.7 contains the detailed provisions concerning prohibited ex parte communications, and Paragraph 1.4.5 allows for any Participant in a hearing to file a motion for disqualification or recusal of a Hearing Officer, Technical Advisor or member of the Hearing Body on the grounds of (among others) an ex parte communication prohibited by Paragraph 1.4.7. Paragraph 1.4.5 also sets forth the procedures for consideration of and ruling on such motions.

April 19 Order, P 156: We also agree with APPA that if a hearing body uses a technical advisor, as attachment 2, section 1 permits, the hearing body should be required to disclose the identity and professional affiliations of the advisor, and parties to the hearing may raise objections to the advisor's participation. Accordingly, we direct NERC to adopt this requirement.

NERC Response:

Paragraph 1.4.6 of revised Attachment 2 now provides that:

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

April 19 Order, P 157: We also agree with APPA that a party should have the right to cross-examine another party's witnesses at a hearing governed by attachment 2. Accordingly, we direct NERC to make this modification.

NERC Response:

Paragraph 1.6.14 of revised Attachment 2 now provides that "Each Participant shall have the right to cross-examine each witness of any other Participant."

April 19 Order, P 158: We also require NERC to adopt AMP-Ohio's suggestion that the hearing body permit reply briefs after post-hearing initial briefs and exclude material from the record only in response to a motion by a party. In addition, we agree with AMP-Ohio that written testimony sponsored by a party should be served on other parties sufficiently in advance

of the hearing. However, the hearing body, at its discretion, should set the date for service of written testimony.

NERC Response:

In revised Attachment 2, Paragraph 1.7.1 expressly provides for the filing of both initial briefs and reply briefs, on a schedule set by the Hearing Officer. Additionally, Paragraph 1.7.5 expressly provides for the filing of briefs on exceptions to the Hearing Officer's Initial Opinion and briefs in reply to exceptions. Further, Paragraph 1.3.2, which sets forth the Shortened Hearing Procedure, provides for the filing of initial comments, responsive comments and reply comments (*see* Paragraph 1.3.2(c), (d) and (e)) and, if requested by a Participant, the filing of briefs on exception to the Hearing Officer's initial opinion and briefs in reply to exceptions (*see* Paragraph 1.3.2(g)).

Paragraph 1.6.11 now provides that "The Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant."

Paragraph 1.5.9 provides that all witness testimony for a hearing is to be prepared in written form and shall be filed in advance of the hearing in the sequence specified in Paragraph 1.5.9 and in accordance with a schedule established by the Hearing Officer. As is the case for any document filed during the Hearing Process, the written testimony must be served contemporaneously on the other Participants (*see* Paragraph 1.2.4(b)).

April 19 Order, P 159: We agree with APPA's argument that, consistent with the requirements of due process, attachment 2, section 6.1 should prohibit *ex parte* communications during a short-form procedure. Accordingly, we direct NERC to modify this provision. We are also concerned that attachment 2, section 6.1 authorizes a hearing body to forego testimony under oath or transcription of testimony and related proceedings. NERC does not explain, in that circumstance, how the hearing body could assure truthful testimony or preserve a meaningful record that would support any determination as to the existence of a violation or any sanction for a violation. Accordingly, we direct NERC to either further explain or delete this provision.

NERC Response:

In revised Attachment 2, the procedures for the Shortened Hearing Procedure are set forth in Paragraph 1.3.2. The third section of the first paragraph of Paragraph 1.3.2 states: “The rules containing ex parte communications in Paragraph 1.4.7 are hereby expressly made applicable to the shortened hearing procedures under this Paragraph.”

The Shortened Hearing Procedure continues to provide that there will be no testimony filed and no evidentiary hearing. However, Paragraph 1.3.2(c), (d) and (e) now provide that the Participants’ initial, responsive and reply comments shall each be accompanied by a verification attesting to the truthfulness of the facts alleged in the filing. Further, due process with respect to the quality of the record is provided in the Shortened Hearing Procedure to the Registered Entity that is seeking to contest a notice of Alleged Violation or sanction through the hearing process because the Shortened Hearing Process can be used **only** if it is requested by the Respondent (and then only if the Compliance Enforcement Authority Staff agrees to its use). (See Paragraph 1.3.1.) Stated differently, any Respondent (Registered Entity) has the right to elect use of the full hearing procedure, and cannot be forced to have its contest of a notice of Alleged Violation or sanction adjudicated through the Shortened Hearing Procedure.

April 19 Order, P 160: We also agree with APPA that a notice of alleged violation should clearly set forth a registered entity’s options with respect to the long and short-form procedures. Accordingly, we direct NERC to address this matter.

NERC Response:

Section 5.1, Notification to Registered Entity of Alleged Violation, of the CMEP has been revised to specify that the required contents of a notice of Alleged Violation include “notice that if the Registered Entity elects to contest the Alleged Violation and/or proposed penalty or sanction , the Registered Entity may elect to have the hearing conducted pursuant to either (i) the

short-form procedure in Section 1.3.2, or (ii) full hearing procedure, in **Attachment 2, Hearing Process.**” Additionally, Paragraph 1.4.1 of Attachment 2 states that the notice of hearing issued by the Compliance Enforcement Authority’s clerk, after a Registered Entity requests a hearing, shall state that the Registered Entity has the option to elect either the Shortened Hearing Procedure or the full hearing procedure.

April 19 Order, P 163: We reject AMP-Ohio’s argument that the hearing body should be prohibited from issuing a summary disposition, on its own motion. Subject to the opportunity for each party to object and support its objections with facts and argument, this procedure accords adequate due process to the registered entity. However, we agree with Xcel that a party should have the right to move for summary disposition.

NERC Response:

In revised Attachment 2, Paragraph 1.5.3 now provides that a Participant in a hearing may file a motion requesting summary disposition. In response to such a motion, the Hearing Officer may issue an initial opinion granting summary disposition in whole or in part if it appears there are no genuine issues of material fact.

April 19 Order, P 164: We agree with AMP-Ohio that, under attachment 2, section 8, post-hearing pleadings other than briefs should be entered into the hearing body’s official record. However, absent good cause shown, such pleadings must not seek to introduce additional evidence into the record after the hearing has ended. Accordingly, we direct NERC to make this modification.

NERC Response:

Revised Attachment 2 now contains, in Paragraph 1.7, “Post-Evidentiary Hearing Procedures,” subparagraph 1.7.2 which states: “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.”

April 19 Order, P 165: Finally, we agree with APPA that attachment 2, section 9 should provide that, when serving its written decision, the hearing body will inform a registered entity of its appeal rights. Accordingly, we direct NERC to modify this aspect of its attachment 2 hearing procedures.

NERC Response:

In revised Attachment 2, Paragraph 1.7.8, [HEARING BODY] Final Order, now provides that the service of the Hearing Body’s final order “shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.”

8. Appeals and ERO Review of Penalties

April 19 Order, P 172: We accept the appellate review procedures included by NERC in the Uniform Compliance Program. We also identify modifications to be addressed by NERC. First, we agree with Xcel that it would be helpful for NERC to identify each of the mechanisms it will use to achieve consistency in penalty determinations other than those it has already specified.¹⁰⁵ Accordingly, we direct NERC to address these matters.

¹⁰⁵ We observe, for example, that section 402.1.2 of the NERC Rules of Procedure provides for NERC to conduct an annual evaluation of the goals, tools and procedures of each Regional Entity’s compliance program, and that section 402.2.2 states that NERC shall periodically conduct forums with Regional Entity compliance managers. Further, section 403.20 of the NERC Rules of Procedure sets forth a process under which NERC will approve annual implementation plans for the Regional Entity compliance programs.

NERC Response:

Section 407.1 of the ROP provides:

NERC Review of Regional Penalties and Sanctions — NERC shall review all penalties, sanctions, and remedial actions imposed by each regional entity for violations of reliability standards for consistency with similar violations and fairness in application.

Prior to submitting a Notice of Penalty to the Commission, NERC will conduct such review required by Section 407.1 for each proposed penalty. These reviews will include review of the application of the NERC *Sanctions Guidelines* (Appendix 4B to the ROP) to the violation through standard tools and processes developed for use by the Regional Entities; and will also include a review of similar violations of Reliability Standards and the penalties that were imposed for those violations.

April 19 Order, P 173: We also agree with GSOC that NERC should be authorized to change a penalty determination on its own motion if a registered entity decides not to appeal. This revision would be warranted, for example, in cases where inconsistency among penalty determinations may otherwise result. This authority comports with the Commission's own reservation of authority to review a penalty after NERC files a notice of penalty. We do not expect NERC to exercise this authority on a frequent basis, given the right of the registered entity to seek an appeal raising these same issues. However, it may be appropriate to do so in certain cases.

NERC Response:

Section 5.6 of the CMEP has been revised to state that NERC may direct a Regional Entity to revise a penalty determination that clearly conflicts with the goal of consistent national reliability enforcement. Section 5.6 also provides that NERC will file a notice of each penalty with the Commission, and as noted in P 173, the Commission has the authority to review the penalty determination.

April 19 Order, P 174: Finally, we note that section 409.1 of the NERC Rules of Procedure does not make clear that NERC's appellate procedures apply to registered entities. Because this clarification would be useful, we direct NERC to make this modification.

NERC Response:

NERC is submitting a proposed revision to the first sentence of Section 409.1 of the ROP to state that the NERC appellate procedures to challenge a finding of noncompliance and the imposition of a penalty for a compliance measure directly administered by NERC are available to Registered Entities (as well as to Regional Entities). Because Sections 407.3 and 410 of the ROP address appeals to NERC by Registered Entities from decisions of Regional Entity hearing bodies, for clarity NERC is also proposing to add the following sentence to Section 409.1: "Appeals by registered entities of decision of regional entity hearing bodies shall be pursuant to sections 407.3 and 410." (Section 5.5 of the CMEP also provides that a Registered Entity may appeal the hearing body's decision to NERC as provided for in Sections 407.3 and 410 of the NERC ROP.)

On an unrelated topic, the proposed revisions to Section 409 of the ROP submitted with this filing also include the proposed deletion of the term “regional reliability organization” in subsections 409.1, 409.3, 409.4, 409.5 and 409.8. These deletions are consistent with the removal of references to “regional reliability organizations” as responsible entities from NERC Reliability Standards.²⁸

9. Miscellaneous Comments and Protests Regarding NERC’s *Pro Forma* Uniform Compliance Program and Related Matters

a. Facts and Circumstances Review

April 19 Order, P 175: AMP-Ohio, EEI, and KCPL request that NERC provide more information with respect to the “fact and circumstances” reviews referenced at section 3 of the Uniform Compliance Program.¹⁰⁶ GSOC agrees that NERC’s reference to this review is unclear and may be unnecessary in light of other available procedures.

¹⁰⁶ Section 3 provides, in relevant part, that “[p]rior to any enforcement action or hearing, the Compliance Enforcement Authority may request a fact and circumstances review of an alleged violation.”

April 19 Order, P 176: We agree that the section 3 reference to a facts and circumstances review could be further clarified. We direct NERC to make this clarification.

NERC Response to PP 175 and 176:

In the third paragraph of Section 3.0 of the CMEP, NERC has expanded the discussion of what was referred to in the prior version of the CMEP as the “facts and circumstances review.” This paragraph now provides that upon receiving a report of Alleged Violation from a Registered Entity, audit team or other source, the Compliance Enforcement Authority is to perform a review of the report for accuracy and completeness and to confirm that the reported facts indicate the Registered Entity may have violated a Reliability Standard, before the Compliance Enforcement Authority reports the Alleged Violation to NERC. The full provision now states:

²⁸ See *Mandatory Reliability Standards for the Bulk Power System*, Order No. 693, 118 FERC ¶61,218 (2007), at PP 157-160.

Prior to reporting an Alleged Violations of Reliability Standards to NERC under Section 8.0, the Compliance Enforcement Authority may review the report of violation submitted to it by the Registered Entity, audit team, or others for accuracy and completeness. This may include a review of the applicability of the Reliability Standard(s) upon the Registered Entity, a review of the Registered Entity's actions or conduct in light of the particular Reliability Standard or requirement reported to have been violated, and a review of the functions performed by the Registered Entity and the function reported to have violated the Reliability Standard or requirement. Any corrections to the report of violation are to be made by the Compliance Enforcement Authority, and the Alleged Violation is to be reported to NERC if the Compliance Enforcement Authority has confirmed that the report contains evidence indicating the Registered Entity may have violated a Reliability Standard.

b. Exception Reporting

April 19 Order, P 183: GSOC argues that the term “Reliability Standard baseline norm,” as it appears at section 1.1.11, in the definition of “Exception Reporting,” is vague and should be replaced by the term “violations of a Reliability Standard,” as proposed by WECC as a deviation applicable to the WECC Delegation Agreement.¹⁰⁹

¹⁰⁹ Section 1.1.11 provides, in relevant part, that exception reporting means “[i]nformation provided to the Compliance Enforcement Authority by a Registered Entity indicating that exceptions to a Reliability Standard baseline norm have occurred....”

April 19 Order, P 184: We agree that this definition should be clarified. Accordingly, we direct NERC to make this clarification.

NERC Response to PP 183 and 184:

The revision directed in P 184 has been made to the definition of “Exception Reporting” (which is now Section 1.1.10 of the CMEP due to other reordering and revisions to the Definitions section).

c. Periodic Data Submittals

April Order, P 188: GSOC and APPA request revision to sections 1.1.15 and 3.6.1, which address periodic data submittals. . . . APPA suggests that, after receiving an assessment of compliance following a periodic data submittal, an entity should have an opportunity to submit comments to the compliance enforcement authority before it issues a notice of alleged violation.

April 19 Order, P 190: However, we agree with APPA that the Uniform Compliance Program should include, at section 3.6.1, the same opportunity for a registered entity to comment on a

draft report about a periodic data submittal that it would receive for a draft compliance audit report. Accordingly, we direct NERC to make this change.

NERC Response to PP 188 and 190:

In Section 3.6.1 of the CMEP, a new step 5 has been added to the steps of the Periodic Data Submittals Process: “The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity’s compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.”

d. Spot Checking

April 19 Order, P 194: We agree that the Uniform Compliance Program should include the opportunity APPA seeks for a registered entity to submit comments on reports it may receive on its compliance with reliability standards following a spot check. A registered entity should have the same opportunity to comment on a draft report about a spot check that it would receive for a draft compliance audit report. Accordingly, we direct NERC to make this modification to section 3.3.1.

NERC Response:

In Section 3.3.1 of the CMEP, a new step 5 has been added to the steps of the Spot Checking Process: “The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity’s compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the draft assessment.”

e. Entity Representatives

April 19 Order, P 197: FirstEnergy states that the Uniform Compliance Program and related appendices require “officers” or “officer equivalents” to sign for or appear in an official capacity on behalf of registered entities. FirstEnergy suggests that registered entities should be allowed to use general principles of agency and representation when acting under the NERC Rules of Procedure and the Uniform Compliance Program. According to FirstEnergy, this practice would permit entities to participate in or act on reliability matters through officers, employees or other company representatives such as law firms or technical firms.

April 19 Order, P 198: We agree with FirstEnergy that registered entities and other parties should be permitted to use general principles of agency and representation when acting on reliability issues pursuant to FPA section 215. This determination is consistent with our practice

for representatives of entities that appear before us, *i.e.*, that all appearances be made and pleadings be executed by an entity's officer or other qualified representative.¹¹¹

¹¹¹ See 18 C.F.R. §§ 385.2005(a)(3) and 385.2101 (2006).

NERC Response:

The directive in P 198 has been implemented through several revisions to the CMEP which provide that an officer, employee, attorney or other authorized representative of a Registered Entity may sign reports or other submissions required by the CMEP. First, the following provision has been added as the sixth paragraph of Section 3.0:

Any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. Electronic signatures are permitted in accordance with processes established by NERC and the Regional Entity. NERC or the Compliance Enforcement Authority may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

Second, in Section 3.4.1, Compliance Violation Investigation Process Steps, the step required to be added by P 70 of the April 19 Order states that the Compliance Violation Authority may require the Registered Entity “to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity” and “to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath”

Third, in Section 5.0, Enforcement Actions, Section 5.2, Registered Entity Response, has been revised to state that a Registered Entity electing to contest an Alleged Violation or proposed sanction shall submit a response to the Compliance Enforcement Authority “signed by an officer, employee, attorney or other authorized representative. . . .”

Fourth, Section 6.2, Contents of Mitigation Plans, has been revised to state that a Registered Entity's Mitigation Plan shall be "signed by an officer, employee, attorney or other authorized representative of the Registered Entity"

Fifth, Section 6.6, Completion/Confirmation of Implementation of Mitigation Plans, has been revised to state that upon completion of the Mitigation Plan, the Registered Entity shall provide to the Compliance Enforcement Authority "certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity" that all required actions in the Mitigation Plan have been completed.

Sixth, the fourth paragraph of Section 8.0, Reporting and Disclosure, has been revised to state that a statement provided by a Registered Entity to NERC to accompany NERC's posting of a report of a Confirmed Violation must include the name, title and signature of "an officer, employee, attorney or other authorized representative of the Registered Entity." The requirement that the Registered Entity's statement must be on company letterhead has been deleted.

f. Reporting to NERC

April 19 Order, P 199: Section 8 of the Uniform Compliance Program obligates Regional Entities to report to NERC, on a confidential basis, any alleged violations of reliability standards, whether verified or still under investigation.¹¹²

¹¹² These reports are due within five business days, unless a violation has resulted in, or has the potential to result in, a reduced level of bulk power system reliability, in which case a Regional Entity is required to notify NERC within 48 hours. In turn, NERC is required to inform the Commission or any applicable governmental authority within two business days of receiving notice from a Regional Entity.

April 19 Order, P 200: These reporting requirements, however, require additional clarification and revision. First, the section 8 reporting obligation, as proposed, is limited to "Alleged Violations," which are defined, under the Uniform Compliance Program, as an end-product of a compliance process. Consequently, section 8 does not require a Regional Entity to disclose to NERC the *receipt* of any allegation of a violation, self-report, or other evidence of a violation. As such, section 8 is inconsistent with section 39.7(b) of our regulations, which requires that Regional Entities inform NERC of all alleged violations, a term that, in this context, we construe to include all allegations and evidence of violations that a Regional Entity receives or develops.

April 19 Order, P 201: The Commission’s intent in promulgating this regulation was not to limit a Regional Entity’s reporting requirement to matters the Regional Entity believes may constitute violations.¹¹³ NERC cannot adequately exercise its oversight of Regional Entity compliance programs unless it receives information on all allegations of violations, and in particular, those for which Regional Entities have declined enforcement action. Nor are we in a position to monitor NERC and the Regional Entities in this regard unless NERC provides us with timely information on all allegations of violation. Accordingly, we direct NERC to revise section 8, consistent with these findings.

¹¹³ See Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 583.

NERC Response to PP 199, 200 and 201:

In the second paragraph of Section 8.0, the text that required a Regional Entity to report to NERC any “Alleged Violations of Reliability Standards” (which, as noted in P 200, is a defined term constituting a determination made at the end of a compliance monitoring process) has been revised. Instead of using the defined term “Alleged Violations”, the text now requires the Regional Entity to report to NERC “any allegations of evidence of violations of Reliability Standards regardless of significance, whether verified or still under investigation, that are received or obtained by the Regional Entity through any means” Other references to “Alleged Violation” in this paragraph have been revised in a manner consistent with the change just described.

April 19 Order, P 202: In addition, we find that the deadline for submitting a section 8 report to NERC is unnecessarily slow and must be revised. Specifically, NERC does not explain, or justify, why a Regional Entity need not notify NERC of a potential violation that may possibly result in a reduced level of reliability for 48 hours. A Regional Entity should be capable of notifying NERC immediately and NERC, in turn, should be capable of notifying the Commission immediately after receiving a Regional Entity notice. Accordingly, we direct NERC to revise section 8 to address these concerns or, in the alternative, justify its proposed deadlines.

NERC Response:

NERC has not changed the reporting deadlines in the second paragraph of Section 8.0 that require a Regional Entity to submit a report to NERC of an allegation or evidence of a

violation of a Reliability Standard within 48 hours after the allegation or information is received by the Regional Entity; and require NERC to make a report to the Commission within two business days after receiving a report from a Regional Entity. The 48-hour and two business day reporting requirements are the shortest reasonably achievable deadlines, in light of the broad scope of information which can trigger the requirement for reports by Regional Entities under this provision (see the discussion in the immediately preceding response), and considering Regional Entity and NERC staffing. The 48-hour reporting period takes into account both the amounts of time that the Regional Entity may require to process the information and prepare a report to NERC, and for NERC to then process the Regional Entity's report and prepare its own report to the Commission; as well as the fact that the information may be received just prior to a weekend or holiday, when these functions may not be fully staffed at the Regional Entities and NERC. Based on the broad scope of information which can trigger the requirement to submit reports under this provision, a shortening of the Regional Entity and NERC reporting deadlines in this provision would require significant increases in Regional Entity and NERC staffing that have not been provided for in the NERC and Regional Entity 2007 and 2008 budgets and assessments.

Additionally, while Section 8.0 is focused on reporting evidence or allegations of violations of Reliability Standards, procedures are already in place for notifying the Commission immediately of system conditions that pose a risk to the reliability of the bulk power system. Such conditions are reported immediately to the Commission through www.emergency@ferc.gov. The fact that a Reliability Standard may have been violated, or is alleged to have been violated, does not require this same immediacy of reporting to the Commission absent a risk to the reliability of the bulk power system.

g. Record Retention Requirements

April 19 Order, P 203: Section 9.2 of the Uniform Compliance Program establishes a record retention period for information and data generated or received in connection with a compliance matter.¹¹⁴

¹¹⁴ The retention period is a minimum of five years, unless a different retention period is specified in a reliability standard or by an applicable governmental authority. Section 9.2 further provides that “[i]f the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.”

April 19 Order, P 204: This policy, however, requires additional clarification and revision. First, because NERC defines applicable governmental authority, at section 1.1.3, to exclude the Commission, section 9.2 does not address how the record retention period will be integrated with any record retention requirement the Commission otherwise has established. We clarify that if particular records are covered by both the Uniform Compliance Program retention period and one or more Commission-established record retention periods, the longest retention period shall apply.

NERC Response to PP 203 and 204:

The term “Applicable Governmental Authority” has been redefined in Section 1.1.3 of the CMEP to include the Commission. The revised definition of “Applicable Governmental Authority” is the same as the definition of this term in Article I, Section 1 of the NERC Bylaws. However, to the specific point of P 204, Section 9.2 of the CMEP has been revised to state that information or data generated or received pursuant to Compliance Program activities will be retained for the longer of five years or any retention period specified by the Commission or another Applicable Governmental Authority.

April 19 Order, P 205: Second, NERC does not define the instances in which information or data “is material to the resolution of a controversy” for purposes of establishing when the record retention period commences. We clarify that information falls within this category whenever it is relevant to any of the specific compliance processes listed in section 3. Thus, a registered entity is under an obligation to retain records that relate to any of the specific section 3 compliance processes that commence with respect to that entity when the entity receives notice of its commencement. For example, if a compliance enforcement authority notifies an entity of a spot check pursuant to section 3.3, the registered entity must retain all information relevant to the spot check.

NERC Response:

Section 9.2 has been revised to specifically list “Compliance Audits, Self-Certifications, Spot Checking, Compliance Violation Investigations, Self-Reporting, Periodic Data Submittals, Exception Reporting, and Complaints” as “Compliance Program activities” from which information and data generated or received must be retained for the records retention period. These are the eight compliance monitoring processes in Section 3.0 of the CMEP.

In addition, a sentence has been added to Section 9.2 of the CMEP stating that “The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information.”

h. Revisions

April 19 Order, P 210: We concur with EEI that periodic reviews of the Uniform Compliance Program would be beneficial, especially after NERC, the Regional Entities, and bulk-power system owners, operators and users gain experience with it. At this point, however, it is premature to establish a schedule or procedures for these reviews. Accordingly, we direct NERC to consider this issue with its members and submit a proposal.

NERC Response:

NERC concurs that periodic reviews of the CMEP will be beneficial, particularly after NERC, the Regional Entities and Registered Entities have gained some experience with it. NERC notes that the initial set of Reliability Standards became mandatory and enforceable in June 2007. NERC also notes that pursuant to the Commission’s regulations in 18 C.F.R. §39.3(c) it is required to perform and submit to the Commission an initial self-assessment of NERC’s performance, and the performance of each Regional Entity, in July 2009 (*i.e.*, three years after certification as the ERO). This self-assessment of performance due in July 2009 is the appropriate vehicle for an initial assessment of the CMEP, as it will be based on a reasonable period of experience, specifically, on two years of using the CMEP to monitor and enforce

compliance with mandatory and enforceable Reliability Standards. At that time NERC and the Regional Entities will have completed the initial two annual Compliance Audit schedules (2007 and 2008) and will embarked on their third annual Compliance Audit schedule. Similarly, §39.3(c) of the Commission's regulations requires subsequent self-assessments of NERC's performance and the performance of each Regional Entity to be conducted and submitted to the Commission every five years thereafter; NERC submits that this is an appropriate time interval for subsequent reviews of the CMEP after the initial assessment in 2009.

April 19 Order, P 211: While we agree with FirstEnergy that continued discussions between NERC and stakeholders about the Uniform Compliance Program could be productive, we decline its recommendation to convene a task force. We encourage discussions, which could occur within the framework of periodic reviews under NERC's purview, subject to the proviso that all interested stakeholders are permitted to participate. In this regard, we observe that the Uniform Compliance Program focuses on monitoring and information-gathering for the purpose of detecting violations and on procedural steps under which Regional Entities and NERC can determine violations, correct their effects through mitigation plans, and sanction violators to deter future violations. The program does not appear to incorporate any proactive practices to increase compliance prospectively. Accordingly, we direct NERC to consider proactive elements to be added to the Uniform Compliance Program or other NERC rules, to provide incentives for compliance or otherwise actively prevent violations.

NERC Response:

Having focused its attention on the specific compliance directives in the April 19 Order for purposes of this filing, NERC does not have specific proposals at this time for adding proactive elements to the CMEP or other NERC rules to provide incentives for compliance or otherwise actively prevent violations. NERC expects that identifying such proactive elements to provide incentives for compliance will be a continuous process based on experience gained by NERC and the Regional Entities in implementing the CMEP to monitor and enforce compliance with Reliability Standards, and will be a subject of ongoing dialogue among NERC and the

Regional Entities.²⁹ While NERC has noted in the response to P 210 that the initial self-assessment of its performance due in July 2009 will be an appropriate vehicle for an initial, comprehensive evaluation of the CMEP, NERC does not intend to wait until July 2009 to propose revisions to the CMEP if experience gained prior to that time identifies useful modifications to the CMEP that should be proposed for approval. Additionally, if the experiences of NERC and the Regional Entities in their compliance monitoring and enforcement activities identify particular areas of noncompliance that occur, particular issues that arise or particular root causes of problems that are identified, with greater frequency, NERC anticipates that it and the Regional Entities will undertake programs of education and dissemination of information to Registered Entities concerning these areas of violations, issues and root causes and means to avoid them.

B. NERC's Remaining Compliance Revisions to the *Pro Forma* Delegation Agreement

1. Billing and Collection

April 19 Order, P 213: The *ERO Certification Order* directed NERC to adopt appropriate safeguards in the *pro forma* base Delegation Agreement to ensure that, when a Regional Entity performs billing and collection functions on behalf of NERC: (i) the Regional Entities transfer the money to NERC in a timely manner, and (ii) the Regional Entities do not use their position as billing agent and collector to unduly influence NERC's decisions.¹¹⁸ NERC, in its compliance filing, failed to comply with this requirement. Accordingly, we direct NERC to do so.

¹¹⁸ 116 FERC ¶ 61,062 at P 169.

NERC Response:

Provisions on this topic were not included in the *pro forma* base delegation agreement filed with the Commission in November 2006 because only one Regional Entity, WECC, is

²⁹NERC notes that it and the Regional Entities do not have the ability to provide positive financial incentives for compliance, *i.e.*, monetary awards for good performance or "clean" Compliance Audits, but can only impose financial penalties for violations of Reliability Standards.

performing billing and collection functions within its region on behalf of NERC. Accordingly, NERC did not believe it necessary to include such provisions in the *pro forma* base delegation agreement since they would be applicable only to one of the eight NERC-Regional Entity delegation agreements. Correspondingly, specific provisions were included in Exhibit E of the NERC-WECC delegation agreement on this topic. (See Section 3 of Exhibit E to the NERC-WECC delegation agreement filed with the Commission on November 29, 2006, and on May 18, 2007 (compliance filing) in Docket No. RR07-07.)

However, in light of the directive in P 213, NERC has modified Exhibit E to the *pro forma* Delegation Agreement to provide alternative versions of Section 3 of Exhibit E. The *pro forma* Delegation Agreement submitted with this filing specifies that the existing text of the first two paragraphs Section 3 is to be used as Section 3(a) of Exhibit E if NERC will directly bill and collect assessments from load-serving entities in the Regional Entity's region; and that if the Regional Entity will bill and collect assessments from load-serving entities on behalf of NERC, the following text is to be used as Section 3(a) of Exhibit E:

NERC and [Regional Entity] agree that [Regional Entity] shall act as the billing and collection agent on behalf of NERC to bill and collect assessments for the costs of activities under the Act from load-serving entities (or such other entities as agreed by NERC and [Regional Entity]). [Regional Entity] agrees that it shall (i) issue all invoices to load-serving entities and other entities in a prompt and timely manner after receipt from NERC of the information needed to issue the invoices; (ii) exercise commercially reasonable efforts to collect invoices that are not paid as of the due date(s); and (iii) transfer all funds collected to NERC in a timely manner, as follows: Once per week until all billings are collected, [Regional Entity] will electronically transfer to NERC, in immediately available funds, all payments received by [Regional Entity] from load-serving entities or other entities during that week for payment of invoices. On the same day that [Regional Entity] makes each electronic transfer of funds to NERC, [Regional Entity] shall send an e-mail to the Chief Financial Officer of NERC detailing the collections being transmitted, including a listing of the load-serving entities or other entities from which payments were collected and the amount collected from each entity.

[Regional Entity] agrees that it shall not in any way use its position as billing and collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of reliability standards (including regional standards and differences), administration of the compliance monitoring and enforcement program and other compliance and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of [Regional Entity's] budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds collected to NERC in an untimely manner or other than in accordance with this Agreement.

In the revised delegation agreements being submitted as part of this filing, it continues to be the case that only WECC is billing and collecting assessments from load-serving entities within its region on behalf of NERC. Therefore, Exhibit E to the revised delegation agreements between NERC and FRCC, MRO, NPCC, ReliabilityFirst, SERC, SPP and Texas RE each uses the first alternative version of Section 3(a) described above, and Exhibit E to the NERC-WECC delegation agreement uses the second alternative version of Section 3(a).

2. Confidentiality

April 19 Order, P 217: We agree with WIRAB's advice that the ERO or a Regional Entity should publicly post its determinations to deny a request to disclose publicly information that a submitter deems to be confidential. Otherwise, those who seek public disclosure of information, or its protection from such disclosure, will not be on notice of the standards that Regional Entities and the ERO use to make such determinations or be able to evaluate the consistency of these determinations. A Regional Entity or the ERO also must notify the requesting party whether its request to obtain access to confidential information a submitter asserts to be confidential is granted or denied. Likewise, we direct NERC and the Regional Entities to disclose publicly determinations that particular information is not confidential. Nevertheless, public notice of these determinations must not itself disclose information that NERC or a Regional Entity has determined to fall within one of the six categories of information defined as confidential in section 1501. Thus, in publicly disclosing determinations on confidentiality, NERC and the Regional Entities must expunge any references that would reveal confidential information.

NERC Response:

NERC believes the directives in P 217 are more appropriately addressed in Section 1500, Confidential Information, of the NERC ROP than in its delegation agreements with Regional

Entities. Specifically, Section 1503 of the ROP already sets forth procedure and criteria for requests for confidential information.³⁰ Accordingly, NERC proposes to add the following new subsection 1503.7 to the ROP:

Upon making its determination on a request for disclosure of confidential information, NERC or the regional entity, as applicable, shall (i) notify the requester that the request for disclosure is granted or denied; (ii) publicly post any determination to deny the request to disclose confidential information, including in such posting an explanation of the reasons for the denial (but without in such explanation disclosing the confidential information); and (iii) will publicly post any determination that information claimed by the submitting entity to be confidential information is not confidential information (but without in such posting disclosing any information that has been determined to be confidential information).

C. NERC/Regional Entity Delegation Agreements

1. General

April 19 Order, P 227: As discussed, below, with regard to individual Regional Entity delegation agreements, several Regional Entities will have an affiliated operational function. For example, the ERCOT and SPP Regional Entities will each have a separate division that, as an ISO or RTO, is an operator of the bulk-power system. The WECC and FRCC Regional Entities will also act as a reliability coordinator, with compliance responsibility pursuant to more than a dozen mandatory and enforceable reliability standards.

April 19 Order, P 228: In a situation where a monetary penalty is assessed against the operational side of one of these organizations, it is inappropriate for the Regional Entity to receive the penalty money as an offset against its next-year budget. We are concerned that allowing the Regional Entity to retain the penalty money would merely result in an accounting transfer from one division of the umbrella organization to another. Reducing a monetary penalty to an accounting notation would diminish the effectiveness of the statutory penalties and would not serve as sufficient deterrent to ensure that the operational side of the organization is in compliance with all applicable reliability standards. This reasoning applies regardless of whether the investigation and hearing leading up to the penalty assessment are conducted by the Regional Entity or the ERO.

³⁰On August 6, 2007, NERC filed proposed revisions to Section 1503.2 of the ROP in response to the Commission's June 7, 2007 Order in Docket No. RR06-1-007 (119 FERC ¶61,248). These revisions were approved by the Commission in an Order issued October 18, 2007, in Docket No. RR06-010. *North American Electric Reliability Corporation, Order on Compliance Filing*, 121 FERC ¶61,033 (2007). The clean and redlined versions of the NERC ROP submitted with this filing (**Attachments 3A** and **3B**) incorporate the revisions to Section 1503 approved by the Commission in that Order.

April 19 Order, P 229: Accordingly, in the circumstances discussed above, we conclude that a monetary penalty assessed against the operational side of the organization should be received by the ERO and should be treated as a general offset of the next year's ERO budget for statutory activities.¹²⁷ This will remove the disincentives created by having the same organization pay and receive a monetary penalty. We recognize that this requirement is a change from the Order No. 672 policy that the entity conducting an investigation receive the penalty money as an offset against its next-year's budget for implementing FPA section 215.¹²⁸ However, that policy did not address the specific circumstance in which a penalty would be both paid and received by the same organization. Moreover, the general policy set forth in Order No. 672 will continue to apply in a situation where a Regional Entity assesses a monetary penalty against a non-affiliated entity.¹²⁹

¹²⁷ NERC and the Regional Entities can effectuate this directive by either revising the *pro forma* Delegation Agreement or, alternatively, addressing in the Delegation Agreement of individual Regional Entities to which our concern applies.

¹²⁸ Order No. 672, FERC Stats. & Regs. ¶ 31,212 at P 627.

¹²⁹ In addition, the requirement we establish here does not preclude the RTO from requesting that its penalty costs be recovered in its annual funding filing.

NERC Response to PP 227, 228 and 229:

The *pro forma* Delegation Agreement has been modified to address this directive. First, Section 8(k) of the base Delegation Agreement has been revised to read:

Exhibit E to this Agreement sets forth the mechanism through which [REGIONAL ENTITY] shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which [REGIONAL ENTITY] shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of [REGIONAL ENTITY].

Second, Section 4, Application of Penalties, of Exhibit E to the *pro forma* Delegation Agreement has been revised to read as follows:

All penalty monies received by [Regional Entity], other than penalty monies received from an operational function or division or affiliated entity of [Regional Entity] shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Any penalty monies received from an operational

function or division or affiliated entity of [Regional Entity] shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

Each of the amended and restated delegation agreements with the individual Regional Entities being submitted with this filing incorporates these revisions or substantially similar text.

2. Texas RE Delegation Agreement

April Order, P 245: Finally, we clarify that the ERCOT bylaws are “rules,” under our regulations, which are subject to NERC approval and, if approved by NERC, Commission approval.¹³⁵

¹³⁵ See 18 C.F.R. §§ 39.1 and 39.10 (2006). See also Order No. 672, FERC Stats. & Regs. ¶ 31,212 at P 113 (“[T]he Rules of the ERO and Regional Entities are the bylaws, rules of procedure and other organizational rules and protocols of the ERO or a Regional Entity, respectively.”).

NERC-Texas RE Response:

In compliance with the Commission's requirements, and in accordance with the further orders of the Commission, Texas RE has filed the complete ERCOT bylaws, including provisions applicable to the governance of ERCOT in its many state-law functions and to governance of the independent division of ERCOT, Texas RE, in its functions under the Amended and Restated Delegation Agreement, as Attachment 1 to Exhibit B to the Delegation Agreement, for informational purposes. However, consistent with *In the matter of: North American Electric Reliability Council, North American Electric Reliability Corporation*, Docket No. RR06-1-008, and *In the matter of: Delegation Agreement Between the North American Electric Reliability Corporation and Texas Regional Entity, a Division of ERCOT*, Docket No. RR07-1-001, *Order on Rehearing*, 120 FERC ¶61,260, PP 16-20 (issued September 21, 2007) (“September 21 Rehearing Order”), ERCOT and Texas RE are requesting that (1) the Commission review, approve, and adopt only the ERCOT bylaws cited or quoted in Exhibit B to the Amended and Restated Texas RE Delegation Agreement as Texas RE Regional Entity rules

under the Commission's regulations (18 C.F.R. §§39.1 and 39.10); and (2) the Commission determine that the remainder of the ERCOT bylaws are not regional entity rules under the Commission's regulations and therefore do not require NERC or Commission approval.

April 19 Order, P 253: We accept TRE's Exhibit D. We also require modifications to be addressed by NERC and TRE. TRE's Exhibit D will be required to adopt the modifications addressed above regarding our acceptance of the *pro forma* Uniform Compliance Program, including the modifications that apply to TRE's revised version of NERC's attachment 2 hearing procedures. We authorize the Texas Commission, in its capacity as TRE hearing body, to conduct public hearings and to issue written recommendations that are publicly available pursuant to the Texas Open Meetings Law. As represented by NERC and ERCOT, this provision is consistent with Texas state law. We note that no interveners comment on or protest the public hearing provision.

NERC-Texas RE Response:

Exhibit D, and Attachments 1 and 2 thereto, to the Amended and Restated Texas RE Delegation Agreement being submitted with this filing adopt the modifications directed in the April 19 Order to the NERC uniform CMEP, including the modifications that apply to Texas RE's version of Attachment 2, Hearing Procedures, to the CMEP. As the Commission is aware, the PUCT acts as the hearing body for hearings under the Texas RE CMEP.

April 19 Order, P 255: In the *ERO Certification Order*, the Commission approved NERC's proposal to delegate billing and collection functions to Regional Entities.¹⁴⁶ However, the Commission required that appropriate safeguards be adopted in the delegation agreement to ensure that: (i) the Regional Entity will transfer the money it collects to NERC in a timely manner; and (ii) the Regional Entity will not use its position as a billing and collection agent to unduly influence NERC's decisions. The TRE Exhibit E does not address these required safeguards. Accordingly, we direct NERC and TRE to address this matter.

¹⁴⁶ 116 FERC ¶ 61,062 at P 166, P 169.

April 19 Order, P 256: With respect to the proposed deviation requiring NERC to fund TRE's statutory reliability regulator-related costs on a quarterly basis, within two business days after receipt of the remittance, we are not persuaded on the record presented here that this proposal is either necessary or appropriate. First, neither NERC nor TRE have explained TRE's proposal. In addition, it is unclear whether NERC's cumulative obligations under its delegation agreements, with respect to funding matters, would permit it to honor this additional commitment in a timely, cost-efficient manner. Finally, in the *ERO Certification Order*, the Commission expressed concern that a Regional Entity which was acting as the collection agent

could unduly influence NERC's decisions. Accordingly, because NERC and TRE have not addressed this deviation, we direct NERC and TRE to do so.

NERC-Texas RE Response to PP 255 and 256:

Exhibit E to the Amended and Restated Texas RE Delegation Agreement has been modified in accordance with Section 3 of Exhibit E to the Amended and Restated *pro forma* Delegation Agreement, and now provides, in pertinent part:

NERC shall submit invoices on a quarterly basis to Electric Reliability Council of Texas, Inc. ("ERCOT") covering the NERC and Texas RE budgets approved for collection for the ERCOT region.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund Texas RE's costs for Statutory Functions, as identified in the approved budget attached hereto, on a quarterly basis in four equal payments, within ten (10) business days after receiving the remittance from ERCOT.

Under this arrangement, Texas RE will not collect the fees to support either NERC or the Texas RE, Texas RE will not be NERC's billing and collection agent (and therefore Texas RE will not be collecting funds on NERC's behalf and remitting the collections to NERC), and thus Texas RE will not be in a position to exercise undue influence on NERC in making its decisions. ERCOT, as the RTO, will be responsible for billing assessments to and collecting payments from load-serving entities on NERC's behalf. In addition, NERC and Texas RE have agreed to a time frame (ten business days after receiving remittance from ERCOT) in which NERC will remit funding for Texas RE's statutory activities.

April 19 Order, P 257: Finally, the *ERO Certification Order* required that if a Regional Entity is engaged in non-statutory activities, i.e., non-FPA section 215, non-reliability regulator activities, then it must list them in Exhibit E.¹⁴⁷ The identification of non-statutory activities performed by a Regional Entity is necessary to ensure that such activities do not compromise the Regional Entity's oversight role or independence or present a conflict of interest with its oversight of transmission operators. The TRE Exhibit E fails to provide this information. Accordingly, we direct NERC and TRE to do so in the form of a revised Exhibit E. Further, the

revised Exhibit E should indicate how funding of these non-statutory activities will be kept separate from funding of statutory activities.

¹⁴⁷ *Id.* at P 580. By contrast, statutory costs, *i.e.*, reliability regulator-related costs, include those costs associated with all activities performed pursuant to FPA section 215 and the Commission’s reliability regulations. *See* Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 at P 56 and P 65.

NERC-Texas RE Response:

NERC and Texas RE have agreed to revise Exhibit E in the Amended and Restated Texas RE Delegation Agreement to add Sections 5 and 6, which provide:

5. Description of Non-Statutory Activities

The Texas RE shall also conduct non-Federal Power Act, §215 activities (“Non-Statutory Activities”). Texas RE’s Non-Statutory Activities include:

- Investigation of market participants’ compliance with the ERCOT Protocols and assistance or cooperation in enforcement of violations (“ERCOT Compliance Activities”), so long as the ERCOT Compliance Activities do not conflict with the Delegated Authority;
- Development of policies, processes, standards, and procedures to implement the ERCOT Compliance Activities; and
- Other activities not in implementation or exercise of Delegated Authority.

ERCOT, of which Texas RE is an independent division, operates as an independent system operator under the jurisdiction of the Public Utility Commission of Texas.

6. Time and Expense Tracking to Ensure Separate Funding of Non-Statutory Activities

Texas RE shall implement a time recording and expense management system under which employee time and expenses incurred in the conduct of Non-Statutory Activities will be tracked to ensure that they are not funded by NERC remittances intended for the funding of Statutory Functions.

3. MRO Delegation Agreement

April 19 Order, P 274: However, membership fees, which are set by the board on an annual basis, could upset this balance, particularly if set too high. Accordingly, in order to provide the Commission the opportunity to review them, any fees that MRO proposes to charge members must be identified in its annual budget and business plan.

NERC-MRO Response:

Paragraph 274 requires that any fees MRO proposes to charge members must be identified in the MRO's annual budget and business plan. Although the Commission did not direct a change to Exhibit B to the MRO Delegation Agreement, the Amended and Restated MRO Delegation Agreement being submitted with this filing includes MRO's Bylaws, in conformance with the *pro forma* Delegation Agreement.

MRO has no annual membership fees at this time. MRO does have a \$1,000 initiation fee to cover administrative costs of new members as designated in its membership application which is publicly available; however, this initiation fee does not apply to small end use load members, at this time. If MRO charged annual membership fees, MRO would identify these membership fees in its budget as the Commission has requested.

April 19 Order, P 283: . . . Exhibit E, version 7.1 is generally consistent with the *pro forma* Exhibit E and includes additional clarifications and definitions that we find appropriate. However, with respect to the deletion of data gathering activities as a statutory function, the *ERO Certification Order* found that in order for data collection activities to be considered a statutory activity, NERC would be required to designate them as such.¹⁶⁴ NERC did so in its compliance filing. However, the MRO Exhibit E fails to incorporate this revision or otherwise support a deviation. Accordingly, we direct NERC and MRO to conform the MRO Exhibit E to this provision of the *pro forma* Exhibit E.

¹⁶⁴ 116 FERC ¶ 61,062 at P 582.

April 19 Order, P 284: Finally, the *ERO Certification Order* required that if a Regional Entity is engaged in non-statutory activities, i.e., non-FPA section 215, non-reliability regulator activities, then it must list them in Exhibit E. The identification of non-statutory activities performed by a Regional Entity is necessary to ensure that such activities do not compromise the Regional Entity's oversight role or independence or present a conflict of interest with its oversight of transmission operators. The MRO Exhibit E fails to provide this information. Accordingly, we direct NERC and MRO to do so in the form of a revised Exhibit E. Further, the revised Exhibit E should indicate how funding of these non-statutory activities will be kept separate from funding of statutory activities.

NERC-MRO Response to PP 283 and 284:

Exhibit E to the Amended and Restated MRO Delegation Agreement conforms to the *pro forma* Delegation Agreement and lists, in Section 1, “necessary data gathering activities” for Reliability Assessment and Performance Analysis as one of MRO’s delegated activities to be funded through the ERO funding mechanism. Exhibit E to the Amended and Restated MRO Delegation Agreement (again in conformance with the *pro forma* Delegation Agreement) now includes Section 5 which addresses the Budget and Funding for MRO’s Non-Statutory Activities.

4. NPCC Delegation Agreement

April 19 Order, P 306: . . . NPCC’s Exhibit D will be required to adopt the modifications addressed above regarding our acceptance of the *pro forma* Uniform Compliance Program.

NERC-NPCC Response:

NPCC will implement the revised NERC uniform CMEP, including its Attachments (Appendix 4C to the NERC Rules of Procedure) to monitor and enforce compliance with Reliability Standards by the owners, operators and users of the bulk power system within the U.S. portion of NPCC’s geographic boundaries set forth in Exhibit A to the Amended and Restated NPCC Delegation Agreement. *See* Exhibit D to the Amended and Restated NPCC Delegation Agreement submitted with this filing.

April 19 Order, P 307: We accept section 1.2 of NPCC’s Exhibit D for the purpose of defining NPCC’s compliance and enforcement program with respect to the Canadian portion of NPCC’s geographical area. In this respect, section 1.2 is consistent with individual Canadian Provincial memoranda of understanding and Canadian laws. However, we direct that NPCC provide, consistent with any applicable Canadian or provincial law, any memorandum of understanding into which NPCC enters with any Canadian authority.

NERC-NPCC Response:

All executed memoranda of understanding between NPCC and Canadian authorities will be provided to FERC as allowable under Canadian law.

April 19 Order, P 309: If the NPCC board selects all of its members as members of the compliance committee, or all of the compliance committee's members are board members, the designation of the compliance committee will be consistent with attachment 2, section 1. In particular, we construe a compliance committee composed of a subset of NPCC board members to be a committee of the board. However, if the compliance committee includes representatives, rather than NPCC board members only, the compliance committee must: (i) be balanced; (ii) report directly to the NPCC board; and (iii) be composed or selected in accordance with procedures established by NPCC. NPCC does not provide any information on how a compliance committee that includes representatives would meet these three conditions. Accordingly, we direct NPCC to incorporate in section 2 of its Exhibit D a statement that the compliance committee will meet the requirements of attachment 2, section 1 or, alternatively, explain how a compliance committee with representative members will meet these requirements.

April 19 Order, P 310: The *pro forma* attachment 2 hearing procedures include provisions, at section 10, under which a registered entity may contest issuance of a remedial action directive. NPCC's Exhibit D, however, does not specifically provide that the compliance committee will preside at hearings on remedial action directives. Accordingly, we direct NPCC to clarify whether the compliance committee or another entity will do so.

NERC-NPCC Response to PP 309 and 310:

Section 2.0 of Exhibit D to the Amended and Restated NPCC Delegation Agreement being submitted with this filing now contains the following text:

NPCC shall establish and maintain a hearing body with authority to render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan. The NPCC Compliance Committee shall serve in the role as the hearing body. This committee will consist of an NPCC Compliance staff member as chairman and balanced stakeholder representatives appointed by the NPCC Board and reports directly to the NPCC Board. Members of the Committee will be selected by established NPCC procedure. Quorum and voting rules applicable to the NPCC Board shall apply to the NPCC Compliance Committee.

Compliance Hearings will be conducted by a qualified, independent consultant Hearing Officer, who will present the results of the Hearing to the Hearing Body for their final determination. The Hearing Body will not be present at the actual Hearing but will have access to the complete record of that Hearing before it makes its final decision.

NPCC will utilize the Hearing Procedure described in Attachment 2 to address Remedial Action Directives that are contested. As such the CC will be utilized in the hearings on Remedial Action Directives similar to as it is utilized in all other Hearings.

April 19 Order, P 311: We accept NPCC’s proposal in section 3 of its Exhibit D to designate its independent compliance staff as the staff responsible for initial determinations for all compliance submittals. We also identify modifications to be addressed by NERC and NPCC. First, because NPCC does not define the compliance submittals its staff will process initially, we direct NPCC to do so. In this regard, we observe that the *pro forma* Uniform Compliance Program provides for registered entities to make submissions to Regional Entities that include self reports, periodic data submittals, self-certifications, exception reporting and complaints.

NERC-NPCC Response:

Section 2.0 of Exhibit D to the Amended and Restated NPCC Delegation Agreement being submitted with this filing now contains the following text:

NPCC Compliance Staff will review compliance submittals from Registered Entities related to Self-Certification; Self-Reporting; Exception Reporting; and Periodic Data Submittals.

April 19 Order, P 312: Second, we direct NPCC to describe how it will conduct other compliance activities, such as compliance audits and investigations, that do not readily appear to constitute compliance submittals. Third, because it is not clear what “applicable technical committees” NPCC’s compliance staff may consult in making its initial determinations and whether these committees, like compliance staff, would be bound by applicable policies referenced in the Uniform Compliance Program to ensure their impartiality and fairness, we direct NPCC to provide clarification on these points. We expect that, especially after an initial period in which reliability standards are in effect, NPCC compliance staff would not require consultation with technical committees on a regular basis for routine submittals and matters.

NERC-NPCC Response:

In response to the “Second” point in P 312, Section 3.0 of Exhibit D to the Amended and Restated NPCC Delegation Agreement now contains the following text:

NPCC has implemented a comprehensive Compliance Audit and Spot Check Program that will be used to meet those requirements as included in the CMEP and consistent with the NERC Rules of Procedure. The annual Compliance Audit schedule is developed and included in the Annual CMEP Implementation Program. This schedule identifies the Registered Entities that will be audited, when they will be audited and what type of Audit it will be (on-site or off-site). Once the schedule is established an NPCC Pre-audit package is developed containing the pre-audit questionnaire; the appropriate Reliability Standards Audit Worksheets (RSAWs); copies of relevant Reliability Standards and other related documentation. The package is sent out at least 60 days prior to the scheduled audit and in most cases the package goes out 90 days or more in advance. The same package is used for either an on-site or off-site audit. The

audit team is formed and consists of an NPCC Staff person (Audit Team Leader), an NPCC Contract Auditor, a NERC Staff representative (as an observer) and a FERC representative (if they elect to participate). The audit is conducted and the NPCC members of the team write the audit report and present it to the Registered Entity for their review and comment before it is finalized. The audit team is responsible for reporting all compliance related information. Applicable Standards are identified and compliance and non-compliance is noted. In instances of non-compliance the submittals made by the audit team are processed as other compliance inputs through the compliance staff as previously described.

The Spot Check Program is used as a means of verifying self-certifications that have been made earlier in the year. An internal, unpublished schedule is developed by the compliance staff and each applicable Registered Entity is given 30 days notice that they must supply the requested information in support of an earlier referenced self-certification. The staff reviews the submitted information and uses the submittal to verify the earlier self-certification. Upon completion of the compliance staff review an assessment is made and the Registered Entity is notified of the outcome. In instances of identified non-compliance the results are processed as other compliance inputs.

Compliance Violation Investigations are conducted upon completion of an initial event analysis. This initial event analysis thoroughly reviews the incident identifying all the facts and circumstances associated with the incident and a final report is developed summarizing the results of this analysis. This final report is then forwarded to the NPCC compliance staff who reviews the report, identifies applicable Reliability Standards, and performs a compliance assessment to determine if any violations have occurred. In the event that violations are identified they are submitted and processed through the CMEP as described above.

In response to the “Third” point in P 312, Section 3.0 of Exhibit D to the Amended and Restated NPCC Delegation Agreement now contains the following text:

Implementation of the NERC Compliance Enforcement and Monitoring Program by NPCC requires that the NPCC Compliance Staff make the initial compliance determination for all compliance submittals. After consultation, as appropriate, with the technical committee of NPCC, the Reliability Coordinating Committee, and the Task Forces on Coordination of Planning, Coordination of Operation, System Studies, System Protection and Infrastructure Technology, NPCC independent Compliance Staff then makes the final compliance determination before forwarding a report to the NPCC Compliance Committee.

April 19 Order, P 313: Finally, NPCC failed to provide details, at section 3, regarding the “final compliance determination” that the compliance staff will make before forwarding a report to the compliance committee. We agree that after issuing a notice of alleged violation, or

terminating an investigation without issuing such a notice, compliance staff may forward its report on the matter to the compliance committee. However, only the compliance committee, serving as NPCC's hearing body, can make enforcement determinations for NPCC. Accordingly, we direct NERC and NPCC to describe the compliance determinations that the NPCC compliance staff will make and how the compliance staff will report these determinations to the compliance committee.

NERC-NPCC Response:

Section 3.0 of Exhibit D to the Amended and Restated NPCC Delegation Agreement being submitted with this filing now contains the following text:

NPCC Compliance Staff will initially review all submittals received to assure that the information forwarded is accurate and complete. This process will be conducted by the staff members and may require contact via e-mail or phone to confirm information. Once information is confirmed, the Staff will review the information and make an initial determination. If the Compliance Staff identifies that a potential violation occurred it then issues a "Notice of Alleged Violation" to the Registered Entity, the Compliance Committee and NERC. The Compliance Staff will then conduct its detailed analysis of the potential violation, consulting the technical committees identified above if necessary and then making a final compliance determination. At this point the Compliance Staff will also make a penalty determination and include that in its report to the Compliance Committee. Once endorsement has been received by the NPCC Compliance Committee and BOD the Compliance Staff will issue a "Notice of Regionally Verified Violation" to the Registered Entity, the CC, BOD and NERC.

April 19 Order, P 315: . . . [T]he *ERO Certification Order* required that if a Regional Entity is engaged in non-statutory activities, i.e., non-FPA section 215, non-reliability regulator activities, then it must list them in Exhibit E. The identification of non-statutory activities performed by a Regional Entity is necessary to ensure that such activities do not compromise the Regional Entity's oversight role or independence or present a conflict of interest with its oversight of transmission operators. The NPCC Exhibit E fails to provide this information. Accordingly, we direct NERC and NPCC to do so in the form of a revised Exhibit E. Further, the revised Exhibit E should indicate how funding of these non-statutory activities will be kept separate from funding of statutory activities.

NERC-NPCC Response:

Consistent with Exhibit E to the Amended and Restated *pro forma* Delegation Agreement, Exhibit E to the Amended and Restated NPCC Delegation Agreement being submitted with this filing now contains the following text in new Section 5:

NPCC performs functions or activities other than its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this **Exhibit E** (such other functions and activities being referred to herein as "non-statutory activities"). NPCC shall provide its budget for such non-statutory activities to NERC at the same time that NPCC submits its annual budget request to NERC pursuant to Section 1. NPCC's budget for non-statutory activities that is provided to NERC shall contain a detailed list of NPCC's non-statutory activities, a description of the funding sources for the non-statutory activities, and a description of the procedures NPCC will use to ensure that funding of the functions and activities listed in Section 1 of **Exhibit E** will be kept separate from funding of the non-statutory activities. NPCC agrees that no costs of non-statutory activities are to be included in the calculation of NPCC's charges for its activities pursuant to this Agreement.

Section 5 of Exhibit E then goes on to describe the manner in which NPCC non-statutory functions will be funded.

5. ReliabilityFirst Delegation Agreement

April 19 Order, P 332: However, membership fees, which are set by the board on an annual basis, could upset this balance, particularly if set too high. Accordingly, in order to provide the Commission the opportunity to review them, any fees that RFC proposes to charge members must be identified in its annual budget and business plan. In addition, we reject, as inconsistent with FPA section 215, RFC's proposal to assess all members for the costs of non-statutory activities. While the Commission has stated that a Regional Entity may engage in non-statutory activities, subject to certain limits, its primary function is to develop and enforce reliability standards. It would be improper to require interested stakeholders to fund other activities as a condition to their membership in RFC. RFC may collect funds through other means (such as user fees), or may charge special membership fees to those who either choose or are required to participate in non-FPA section 215 activities, however, it may not require contributions from those who do not.

NERC-ReliabilityFirst Response:

At present, ReliabilityFirst performs only delegated, statutory functions. However, the Amended and Restated ReliabilityFirst Delegation Agreement being submitted with this filing incorporates revised Exhibit E of the *pro forma* Delegation Agreement, including Section 5 thereof. Section 5 specifies that if ReliabilityFirst performs any non-statutory functions, it will first provide its budget for, a detailed listing of, and a description of the funding sources for, the non-statutory activities in its annual business plan and budget submission to NERC, as well as a

description of the procedures *ReliabilityFirst* will use to ensure that funding of statutory activities will remain separate from funding of non-statutory activities. Additionally, Section 5.9.2 of the *ReliabilityFirst* Bylaws (now included in Exhibit B to the Amended and Restated *ReliabilityFirst* Delegation Agreement) has been modified to clarify the manner in which *ReliabilityFirst* will collect monies for non-delegated functions in the event *ReliabilityFirst* performs such functions in the future, and now states in pertinent part: “The Board of Directors may from time to time fix the amount of user fees or other charges, if any, for activities that are not delegated to the Corporation by NERC under the Delegation Agreement and determine the methods of collection from entities that choose to participate in such activities.” Under Section 2.2(e) of the *ReliabilityFirst* Bylaws, performance of any non-delegated functions would need to be authorized by the *ReliabilityFirst* Board.

April 19 Order, P 340: With regard to participation in reliability standards development, RFC’s insistence on membership as a requirement for voting on reliability standards is inconsistent with our requirement in Order No. 672. In that order, the Commission directed that membership must not be a condition for participating in reliability standard development, or for voting on the approval of a reliability standard.¹⁸⁴ Instead, RFC requires membership for full participation and voting on reliability standards development. RFC, moreover, fails to offer any explanation or rationale that would support a deviation from this requirement. Accordingly, we direct RFC to make appropriate provisions in its Standards Development Manual and applicable bylaws to clarify that any interested stakeholder may participate and vote on reliability standard development.

¹⁸⁴ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 172.

NERC-*ReliabilityFirst* Response:

The *ReliabilityFirst* Reliability Standards Development Procedure (now included in Exhibit C to the Amended and Restated *ReliabilityFirst* Delegation Agreement) has been revised to allow non-members of *ReliabilityFirst* to vote in the reliability standards ballot process. See page 9 of the *ReliabilityFirst* Reliability Standards Development Procedure, stating that “Participation shall not be conditioned upon membership in the *ReliabilityFirst*. . . .”

April 19 Order, P 341: We agree with FirstEnergy regarding RFC's dependence on materiality as a condition for adoption of a reliability standard. This term is inconsistent with previous Commission direction regarding appropriate factors for review and approval of a reliability standard. Therefore, RFC must eliminate from the RFC Standards Development Manual materiality as a characteristic required for a reliability standard.

NERC-ReliabilityFirst Response:

The ReliabilityFirst Reliability Standards Development Procedure (now included in Exhibit C to the Amended and Restated ReliabilityFirst Delegation Agreement) has been revised to remove references to "material to reliability."

April 19 Order, P 346: We accept Exhibit D to the RFC Delegation Agreement. We also identify modifications to be addressed by NERC and RFC. With respect to the issues raised by FirstEnergy, we agree that NERC and RFC should amend the RFC attachment 2 hearing procedures to identify the hearing body. . . .

NERC-ReliabilityFirst Response:

Section 2.0 of Exhibit D to the Amended and Restated ReliabilityFirst Delegation Agreement identifies the ReliabilityFirst hearing body:

ReliabilityFirst's hearing body is the Board Compliance Committee (CC), which is a sub-committee of the full Board of Directors. The CC is comprised of five (5) Directors, three (3) of which are independent Board of Director members, and two (2) that are stakeholder Board of Director members. A majority of the independent Board of Directors, two (2), must be present for a quorum of the CC to be established.

In the Amended and Restated ReliabilityFirst Delegation Agreement, ReliabilityFirst has adopted the new NERC *pro forma* Hearing Procedures, which are comprehensively revised from the Attachment 2 Hearing Process submitted to the Commission in November 2006. The ReliabilityFirst Hearing Procedures attached to Exhibit D to the Amended and Restated ReliabilityFirst Delegation Agreement define "Hearing Body" as "a composition of members of the ReliabilityFirst Compliance Committee as established by the Board of Directors of ReliabilityFirst as set out in the ReliabilityFirst Compliance Committee Charter."

April 19 Order, P 350: Exhibit E to the RFC Delegation Agreement adopts the *pro forma* Exhibit E, without deviation. However, the *ERO Certification Order* required that if a Regional Entity is engaged in non-statutory activities, i.e., non-FPA section 215, non-reliability regulator activities, then it must list them in Exhibit E. The identification of non-statutory activities performed by a Regional Entity is necessary to ensure that such activities do not compromise the Regional Entity's oversight role or independence or present a conflict of interest with its oversight of transmission operators. The RFC Exhibit E fails to provide this information. Accordingly, we direct NERC and RFC to do so in the form of a revised Exhibit E. Further, the revised Exhibit E should indicate how funding of these non-statutory activities will be kept separate from funding of statutory activities.

NERC-ReliabilityFirst Response:

See response to P 332 above. Exhibit E to the Amended and Restated ReliabilityFirst Delegation Agreement incorporates Section 5 to the Amended and Restated *pro forma* Delegation Agreement. However, since ReliabilityFirst performs no non-statutory functions at this time, ReliabilityFirst has no non-statutory activities to be listed.

6. SERC Delegation Agreement

April 19 Order, P 365: However, we reject, as inconsistent with FPA section 215, SERC's proposal to assess all members for the costs of non-statutory activities, i.e., non-FPA section 215, non-reliability regulator activities. While the Commission has stated that a Regional Entity may engage in non-statutory activities, subject to certain limits, its primary reliability regulator-related function is to develop and enforce reliability standards. It would be improper to require interested stakeholders to fund other activities as a condition to their membership in SERC. SERC may collect funds through other means (such as user fees), or may charge special membership fees to those who either choose or are required to participate in non-FPA section 215 activities, however, it may not require contributions from those who do not. Additionally, any membership fees, which are set by the board on an annual basis, could upset this balance, particularly if set too high. Accordingly, in order to provide the Commission the opportunity to review them, any fees that SERC proposes to charge members must be identified in its annual budget and business plan.

NERC-SERC Response:

SERC does not currently perform non-statutory functions and has no intentions at this time to do so in the future. However, the SERC board may from time to time propose SERC conduct non-statutory functions that are not inconsistent with the Regional Entity's delegated responsibilities under §215 of the FPA. Should SERC in the future consider performing non-

statutory functions, the approach directed by the Commission is what SERC intended – to allocate the cost of such functions to the users and beneficiaries. SERC intends that if it elects in the future to propose to perform non-statutory functions, such a proposal and a funding plan will be submitted to NERC and the Commission for approval as a component of the annual business plan and budget. SERC has complied with the Commission’s directive in Sections 12.2 and 12.3 of SERC’s Amended and Restated Bylaws, included in Exhibit B, and through the addition of Section 5 to Exhibit E, to the Amended and Restated SERC Delegation Agreement being submitted with this filing.

April 19 Order, P 372: With regard to participation in reliability standards development, SERC’s insistence on membership as a requirement for voting on reliability standards is inconsistent with our requirement in Order No. 672. In that order, the Commission directed that membership must not be a condition for participating in reliability standard development, or for voting on the approval of a reliability standard.²⁰¹ Instead, SERC requires membership for full participation and voting on reliability standards development. SERC, moreover, fails to offer any explanation or rationale that would support a deviation from this requirement. Accordingly, we direct SERC to make appropriate provisions in its Standards Development Manual and applicable bylaws to clarify that any interested stakeholder may participate and vote on reliability standard development.

²⁰¹ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 172.

NERC-SERC Response:

SERC has revised the SERC Regional Reliability Standard Development Procedure (now included in Exhibit C to the Amended and Restated SERC Delegation Agreement being submitted with this filing) to replace committee approval of standards with approval through an open stakeholder ballot pool, similar to the registered ballot body used by NERC. SERC has also added language to clarify that the regional standards process is open to all entities materially affected by reliability in the region. Participation includes proposing standards, reviewing and commenting on proposed standards, and voting through an open ballot pool. The following

specific modifications to the Procedure have been made in response to the Commission's directive:

- Section 2: Added definitions for ballot body and ballot pool, consistent with NERC's definitions.
- Section 3.5: Added statement that SERC membership is not a prerequisite for joining a standard development team.
- Section 3.9: Added a step to form a ballot pool to vote on a proposed standard.
- Appendix A.2: Replaced the committee voting procedure with a voting procedure of a balanced stakeholder ballot pool. Ballot pool participation is open. Seven sectors are used to balance the weight of the vote among stakeholders. The seven sectors are identical to those used for the SERC board and are weighted in accordance with the weighting used in the board executive committee and board compliance committees, as noted in the SERC Bylaws (included in Exhibit B to the Amended and Restated SERC Delegation Agreement).

April 19 Order, P 374: Exhibit E to the SERC Delegation Agreement adopts the *pro forma* Exhibit E, without deviation. However, the *ERO Certification Order* required that if a Regional Entity is engaged in non-statutory activities, i.e., non-FPA section 215, non-reliability regulator activities, then it must list them in Exhibit E. The identification of non-statutory activities performed by a Regional Entity is necessary to ensure that such activities do not compromise the Regional Entity's oversight role or independence or present a conflict of interest with its oversight of transmission operators. The SERC Exhibit E fails to provide this information. Accordingly, we direct NERC and SERC to do so in the form of a revised Exhibit E. Further, the revised Exhibit E should indicate how funding of these non-statutory activities will be kept separate from funding of statutory activities.

NERC-SERC Response:

As stated in the response to P 365, SERC does not currently provide non-statutory functions and has no intentions at this time to do so in the future. However, the SERC board may from time to time propose SERC conduct non-statutory functions that are not inconsistent with the Regional Entity's delegated responsibilities under §215 of the FPA. Because SERC does not perform non-statutory functions, SERC has no non-statutory functions to list in Exhibit E to the Delegation Agreement, and there is no need at this time to demonstrate any potential conflict of interest has been mitigated. Consistent with the *pro forma* Delegation Agreement,

however, Exhibit E to the Amended and Restated SERC Delegation Agreement now includes new Section 5, regarding the separation of funding of non-statutory functions from funding of statutory functions, should SERC in the future decide to perform non-statutory functions.

7. SPP Delegation Agreement

April 19 Order, P 397: . . . [W]e agree with Xcel that the ability of the SPP Regional Entity trustees to act independently of the SPP RTO has not been sufficiently established in matters relating to their appointment, compensation, the preparation and control of budgets, the separation of personnel, the development of reliability standards and in other matters subject to the oversight and control of the SPP board.

April 19 Order, P 398: For example, while the SPP bylaws provide that the Regional Entity trustees' duties will include "Regional Entity staff administration" and "Regional Entity budget decisions," the SPP board is given authority, under the SPP bylaws, that could be used to assert SPP RTO control over the SPP Regional Entity trustees. Specifically, section 8.3 gives the SPP board the authority to "define" the costs associated with the SPP Regional Entity. Section 6.6 gives the corporate governance committee (a committee that reports directly to the SPP board) authority to nominate SPP Regional Entity trustees and to develop criteria regarding the overall composition of the SPP Regional Entity trustees. In addition, section 9.7.9 gives the human resources committee (also controlled by the SPP board) the authority to recommend compensation for the SPP Regional Entity trustees. Accordingly, we direct SPP to modify these provisions to ensure that the independence of the SPP Regional Entity trustees in standards development and as otherwise discussed will not, in fact, be compromised directly, or indirectly, by the SPP board. In satisfying this requirement, we also invite SPP to consider the use of NERC to perform some or all of the functions identified herein, subject to NERC's approval.

NERC-SPP Response to PP 397 and 398:

As used in Section 8.3 of the SPP Bylaws, the term "define" merely means that SPP will clearly set out, or separately delineate, in its annual budget those costs associated with its Regional Entity responsibilities. The Regional Entity Trustees have authority over the contents of the Regional Entity budget, as described in Section 9.7.1(f) of the SPP Bylaws. To clarify this point, the word "define" has been changed to "set out" in Section 8.3 of the SPP Bylaws (now included in Exhibit B to the Amended and Restated SPP Delegation Agreement being submitted with this filing).

In regard to the role of the Corporate Governance Committee ("CGC") in the selection of

Regional Entity Trustee candidates, the composition of this committee is critical. While the CGC reports to the SPP Board of Directors, the majority of its representatives are determined directly by the members of SPP. (Two of the representatives of the CGC are determined by position: the Chairman of the Board and the President/CEO.) Representatives of the CGC are elected by the members of their respective sectors. This unique composition relative to other Board committees provides the requisite independence since the CGC is primarily comprised of members that are directly elected by Members. The Board of Directors has no direct influence over its composition.

The CGC's responsibility is limited to nominating candidates to the SPP Membership for consideration and election. This election process occurs during a meeting of Members and with no Board of Directors involvement. The process allows for additional nominations from the floor as well, so the Membership is not limited to only those candidates nominated by the CGC. In fact, during the initial seating of the Regional Entity Trustees, the CGC nominated three candidates and there was an additional candidate nominated from the floor. The election resulted in two of the CGC's nominees and the nominee from the floor being chosen to serve.

Section 9.7.9 of the SPP Bylaws assigned responsibility for recommending compensation for the Regional Entity Trustees to the Human Resources Committee, another committee of the Board of Directors. (The Human Resources Committee is comprised of two independent directors and four stakeholders, all selected by the CGC and approved by the Board.) To better meet the independence requirements for Regional Entity governance, this responsibility will be reassigned to the CGC. Similar to the nominating process, the CGC will not determine compensation levels for the Regional Entity Trustees, but will recommend compensation levels to the SPP Membership for its consideration and approval. Sections 6.6 and 9.7.9 of the SPP

Bylaws have been revised accordingly.

As provided in the SPP Bylaws, the Executive Director of Compliance, who is responsible for the Compliance Monitoring and Enforcement Program, reports directly to the Regional Entity Trustees who have responsibility for employment, evaluation, and compensation. In addition, the Regional Entity Staff also includes Counsel who reports directly to the Regional Entity Trustees. A primary responsibility of the Regional Entity Counsel position is oversight and reporting to the Regional Entity Trustees of the Standards Development process to ensure compliance with that process. The Regional Entity Trustees also have authority to engage other staff or support as needed.

April 19 Order, P 401: SPP represents that the SPP Regional Entity governance structure satisfies the requirements of Governance Criterion 4, *i.e.*, that the SPP Regional Entity will have established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. However, it is unclear whether SPP's quorum and voting requirements will allow for this balance. Specifically, SPP Bylaw, section 3.8 provides that a quorum for a meeting of the markets and operations committee or the members committee will be those members present. Section 3.9, moreover, establishes only two voting sectors: the transmission owning members sector and the transmission using members sector.

April 19 Order, P 402: While we acknowledge that these protocols may be sufficient to meet the minimum requirements of our standards, we intend to closely monitor the activities and workings of the SPP committees and subordinate structures and to provide additional guidance and directives, as may be necessary. We also expect the ERO to address the effectiveness of these provisions and identify any related concerns and recommendations in the ERO's first performance assessment, which must include an analysis of Regional Entity effectiveness.²⁰⁹

²⁰⁹ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 754.

NERC-SPP Response to PP 401 and 402:

Standards development will be overseen by the Regional Entity, specifically by Regional Entity Staff reporting directly to the Regional Entity Trustees, and will occur through the SPP working group structure. Participation and voting will be open to any interested stakeholder.³¹

³¹ Participation in all SPP meetings is already open to any interested party. Voting rights in the

There will be various sectors in which an entity can register for the ballot body during a 15-day period prior to the start of balloting. The ballot body will take a *binding* vote in support of or opposition to the action. There are five sectors available for registration. An entity may only register once for a ballot issue. The issue must pass within a sector, with a global 2/3 majority required to approve.

Upon approval by the Standards Development Team (“SDT”), which is a SPP working group, the Markets and Operations Policy Committee (“MOPC”) will hear the action including the results of the SDT’s vote. The MOPC will take an *advisory* vote in support of or opposition to the action. The MOPC votes in two sectors, transmission owning and non-transmission owning, and requires an average of the vote of each sector of at least 66 percent to pass. In the case of standards development, achieving this 66 percent average would result in an advisory vote in support of the action. A quorum for the MOPC is established by those members present, but the voting is equally weighted by sector without regard to the number present in a sector.

The SPP Board of Directors/Members Committee (“BOD/MC”) would then hear the action, including the results of the votes of the SDT and the MOPC. The BOD/MC would provide an *advisory* vote in support of or opposition to the action. In the case of standards development, a simple majority vote of the BOD/MC will result in an advisory vote in support of the action.

The Regional Entity Trustees will hear the action last, including the results of the votes of the SDT, MOPC, and BOD/MC. The Regional Entity Trustees then take a *binding* vote on the action, with approval resulting in a recommendation to NERC; otherwise, the action is terminated.

Standards Development process will be extended to non-members.

While the votes by the MOPC and BOD/MC are advisory only, they serve important purposes. These advisory votes provide broader corporate context for the action, and most importantly, additional forums for stakeholder input since meetings of the MOPC and BOD/MC are open to participation by any interested stakeholder. However, the final, binding action to recommend or not recommend a regional standard to NERC lies with the Regional Entity Trustees.

April 19 Order, P 403: We also reject, as inconsistent with FPA section 215, SPP's proposal to assess all members a \$6,000 annual fee. While the Commission has stated that Regional Entities may assess nominal membership fees, SPP's fee appears to exceed this limit.²¹⁰ Further, funding of all statutory activities through NERC was approved in the *Business Plan and Budget Order*. SPP, if it wishes, may propose an appropriate fee in its annual budget filing.

²¹⁰ [Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 171.]

NERC-SPP Response:

The SPP Membership fee is for membership in Southwest Power Pool, Inc. Membership in Southwest Power Pool, Inc. is not required to participate in Regional Entity activities. In the September 21 Rehearing Order, the Commission, without ruling on the merits, clarified that SPP is not precluded from filing a proposal to implement an RTO membership fee pursuant to §205 of the FPA.³²

April 19 Order, P 404: Further, we clarify that the SPP bylaws are "rules," under our regulations, which are subject to NERC approval and, if approved by NERC, Commission approval.²¹¹

²¹¹ See 18 C.F.R. §§ 39.1 and 39.10 (2006). See also Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 113.

NERC-SPP Response:

SPP notes that it sought clarification concerning P 404, and in the September 21 Rehearing Order, the Commission granted clarification that only those provisions of the SPP

³² September 21 Rehearing Order at P 23.

Bylaws that relate to the SPP Regional Entity functions require NERC approval.³³ Further, the Commission required that any other proposed revision to the SPP Bylaws that is filed with the Commission pursuant to §205 or §206 of the FPA must be served on NERC, not for approval of the Bylaw revision, but rather in order to provide NERC the opportunity to review the proposed Bylaw revision and determine whether it has any ramification for the Regional Entity function, and to advise the Commission of any reliability-related issues.³⁴

April 19 Order, P 416: However, we agree with Xcel that additional clarification will be required regarding the respective roles that will be played in the standards development process by the SPP Regional Entity trustees and the SPP board. The SPP Regional Entity trustees must exercise the ultimate control over the standards development process, not the SPP board or the market operations policy committee. We understand that the SPP Regional Entity trustees will have the final vote to approve forwarding a reliability standard to NERC. Nevertheless, according to the proposed bylaws and SPP Standards Development Manual, the SPP board and market operations policy committee would control the standards development process, and could prevent a proposed standard from reaching the SPP Regional Entity trustees in the first place. Accordingly, we direct SPP to make these revisions.

NERC-SPP Response:

The SPP Board of Directors and MOPC Committee do not “control” the standards development process; it is controlled by the Regional Entity Trustees. The MOPC and/or Board may return a proposed standard to the Standards Development Team for reconsideration/clarification in response to stakeholder input at their respective meetings. Alternatively, the MOPC and/or Board may provide an advisory vote in support of or in opposition to the proposed standard. In any case, the Regional Entity Trustees are monitoring all activities related to a proposed standard. In particular, if a proposed standard “stalls” in the process (e.g., is continuously returned, or activity is halted), the Regional Entity Trustees, as described in the SPP Standards Development Process Manual (now included in Exhibit C to the Amended and Restated SPP

³³ September 21 Rehearing Order at P 17.

³⁴ September 21 Rehearing Order at PP 19-20.

Delegation Agreement) have the authority to move the standard forward. The purpose of the interim, advisory steps is to afford additional stakeholder involvement in the process, not to impede progress.

In addition, the MOPC is responsible for assigning development of a standard to the appropriate SPP working group. This ensures that the right expertise is addressing the proposed standard. The Regional Entity Trustees are apprised of the need for the standard and its subsequent assignment to a working group, and are regularly advised of its progress and status by Regional Entity Staff.

April 19 Order, P 417: We also agree with Xcel that, without elaboration, the reference made by the SPP Standards Development Manual to the “business rules and procedures” of the numerous committees to whom consideration of a standard may be referred, in a given case, is vague and lacks adequate transparency. Accordingly, we direct SPP to include in its manual the relevant rules and procedures these committees intend to utilize.

NERC-SPP Response:

The SPP Standards Development Process Manual (now included in Exhibit C to the Amended and Restated SPP Delegation Agreement) has been revised to better reflect the roles and procedures for each group involved in the process, including the appropriate references to governance requirements in the SPP Bylaws.

April 19 Order, P 418: We grant Xcel’s proposed clarification as to whether registration in a ballot body is required to vote on a reliability standard. While reasonable administration requirements may be imposed by SPP to facilitate the efficient operation of its ballot body, we reiterate here that any interested stakeholder may be represented and must be permitted to vote.²²⁰ In addition, we grant Xcel’s proposed clarification as to whether a company or entity can vote in more than one segment if it qualifies for more than one segment and sends a different representative to each segment for which it qualifies. We clarify that we expect SPP to follow a one-entity/one-vote policy.

²²⁰ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 172.

NERC-SPP Response:

SPP will utilize a registered ballot body approach to vote on standards at the Standards

Development Team level. The ballot body will be comprised of the following sectors: Transmission, Generation, Marketer/Broker, Distribution/Load Serving Entity, and End User and Public Interest. Any interested stakeholder may register for the ballot body. Any entity may only register in one sector. Each entity will have one vote.

April 19 Order, P 419: Because the SPP Standards Development Manual has not been approved by the SPP board, we also direct NERC and SPP to submit a finalized, SPP-approved manual

NERC-SPP Response:

At a special meeting on October 1, 2007, the SPP Board of Directors approved the Standards Development Process Manual that is now included in Exhibit C to the Amended and Restated SPP Delegation Agreement being submitted with this filing.

April 19 Order, P 428: We accept Exhibit E of the SPP Delegation Agreement. We also identify modifications to be addressed by NERC and SPP. First, we direct NERC and SPP to conform Exhibit E to the commitment made by SPP in its answer, i.e., to incorporate the cost assignment methodology reflected in the *pro forma* Exhibit E in place of the deviation reflected in the as-filed Exhibit E. With respect to SPP's recovery of its eligible costs, the *ERO Certification Order* required that if a Regional Entity is engaged in non-statutory activities, i.e., non-FPA section 215, non-reliability regulator activities, then it must list them in Exhibit E.²²⁴ The identification of non-statutory activities performed by a Regional Entity is necessary to ensure that such activities do not compromise the Regional Entity's oversight role or independence or present a conflict of interest with its oversight of transmission operators. The SPP Exhibit E fails to provide this information. Accordingly, we direct NERC and SPP to do so in the form of a revised Exhibit E. Further, the revised Exhibit E should indicate how funding of these non-statutory activities will be kept separate from funding of statutory activities.

²²⁴ *ERO Certification Order*, 116 FERC ¶ 61,062 at P 580. By contrast, statutory costs, i.e., reliability regulator-related costs, include those costs associated with all activities performed pursuant to FPA section 215 and the Commission's reliability regulations. See Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 at P 56 and P 65.

NERC-SPP Response:

Exhibit E to the Amended and Restated SPP Delegation Agreement being submitted with this filing has been revised as directed in P 428 and in conformance with Exhibit E to the Amended and Restated *pro forma* Delegation Agreement.

April 19 Order, P 429: The *ERO Certification Order* also found that in order for data collection to be considered a statutory activity, NERC would be required to designate it as such.²²⁵ NERC did so in its compliance filing. However, the SPP Exhibit E fails to incorporate this revision or otherwise support a deviation. Accordingly, we direct NERC and SPP to conform the SPP Exhibit E to this provision of the *pro forma* Exhibit E.

²²⁵116 FERC ¶ 61,062 at P 582.

NERC-SPP Response:

Section 1 of Exhibit E to the Amended and Restated SPP Delegation Agreement being submitted with this filing has been revised as directed in P 429 and in conformance with Exhibit E to the Amended and Restated *pro forma* Delegation Agreement.

8. WECC Delegation Agreement

April 19 Order, P 453: WECC, as a reliability coordinator, is a user, owner or operator of the bulk-power system. As such, WECC is obligated to demonstrate a strong separation between oversight and operational functions.²³³

²³³*ERO Certification Order*, 116 FERC ¶ 61,062 at P 698.

April 19 Order, P 456: WECC's proposals represent a good first step and demonstrate a significant effort to meet the Commission's requirements. Nevertheless, we remain concerned that WECC's compliance staff is not sufficiently separated from its reliability coordinators. For example, both WECC's compliance staff and reliability coordinators are hired and have their performance reviewed by WECC management, and both have their work product reviewed by the same member committees and management personnel. The result is a lack of independence in compliance monitoring and enforcement for WECC operational functions. Accordingly, we direct NERC and WECC to remedy these deficiencies. If it chooses, and NERC agrees, WECC may engage NERC to oversee the compliance and enforcement functions as they relate to WECC's compliance with reliability standards. This is just one possible way to help establish the strong separation that we require.

NERC-WECC Response to PP 453 and 456:

As the Commission indicated in the April 19 Order at PP 454-55, WECC sought to establish an appropriate level of separation between (1) monitoring/enforcement relating to its reliability coordinator functions and (2) monitoring/enforcement relating to Registered Entities. In particular, WECC explained that NERC will lead the audit teams as to audits of WECC reliability coordinators and be responsible for the final audit report, but that the audit team would

include members from WECC or elsewhere to provide the necessary regional expertise for the audits. Any standard violations identified during the audit would be submitted to WECC for processing, allowing for proper due process within WECC and appeals at NERC. WECC would be responsible for establishing penalties, sanctions, mitigation plans and remedial action directives through its CMEP.

In response to the Commission's concerns, WECC discussed with NERC the potential for an expanded NERC role in compliance monitoring and enforcement relating to WECC's reliability coordination functions, as identified by the Commission. NERC has indicated, however, that it does not currently have the resources with the necessary experience related to WECC requirements and practices regarding the Reliability Coordination function to implement an expanded role. WECC will continue to discuss the issue with NERC and to explore other alternatives to address the Commission's concerns.

Until additional measures can be put in place, WECC believes that the existing arrangements are adequate, in light of the following safeguards that assure that (1) NERC and the Commission receive notice of all allegations or evidence of Reliability Standard violations, (2) NERC and the Commission may participate in any WECC investigation, and NERC shall review any complaint relating to WECC's reliability coordination functions, (3) all WECC compliance and enforcement activities relating to WECC reliability coordinators are subject to comprehensive NERC and Commission oversight, and (4) any penalties resulting from WECC reliability coordinator violations will be forwarded to NERC. In particular:

1. Under Section 8 of the CMEP, NERC and the Commission will be notified of "any allegations or evidence of violations of Reliability Standards regardless of significance, whether verified or still under investigation that are received or obtained by the Regional Entity through any means."
2. The Commission (in addition to NERC) may participate in any scheduled or unscheduled audit relating to WECC's reliability coordinators. CMEP, Section 3.1.5.

3. The Commission or NERC may initiate a compliance investigation of a WECC reliability coordinator at any time. In addition, (1) WECC will notify NERC (which will notify the Commission) within two days of a decision to initiate a compliance investigation, (2) NERC will, and the Commission may, participate in the investigation and (3) NERC may assume the leadership of the investigation. CMEP, Sections 3.4, 3.4.1.
4. NERC will review any complaint “that is related to a Regional Entity or its affiliates, divisions, committees or subordinate structures.” CMEP, Section 3.8.
5. WECC enforcement determinations relating to its reliability coordination function that are accepted without hearing are fully subject to NERC and Commission review. CMEP, Sections 5.2, 5.6, 6.5.
6. WECC enforcement determinations relating to its reliability coordination function that are based upon the hearing process are fully subject to NERC and Commission review. CMEP, Sections 5.4-5.6, 6.5; Hearing Procedures 1.6.2-1.6.3, 1.9.2(g).
7. WECC will be adversely affected by any penalties imposed on its reliability coordinators. As required by the Commission, Exhibit E, Section 4 of the Amended and Restated WECC Delegation Agreement confirms that “[a]ny penalty monies received from an operational function or division or affiliated entity of WECC shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC’s budget for its activities as the ERO under the Act for the following year.”

Until any alternative arrangements are put in place, WECC submits that these provisions provide adequate NERC (and Commission) involvement in and review of all WECC activities relating to compliance monitoring and enforcement concerning its reliability coordination function.

April 19 Order, P 458: WECC proposes to assess an annual fee of \$5,000 payable by all members, non-inclusive of end-user members (who would be required to pay \$1,500 annually). The Commission has stated that Regional Entities may assess nominal membership fees but in this case WECC’s fees appear to exceed this limit. Further, funding of all statutory activities through NERC was approved in the *Business Plan and Budget Order*. WECC, if it chooses, may propose an appropriate fee in its annual budget filing. Additionally, we reject as inconsistent with FPA section 215, WECC’s proposal to assess members for the costs of non-statutory activities.

April 19 Order, P 459: While the Commission has stated that a Regional Entity may engage in non-statutory activities, subject to certain limits, its primary function is to develop and enforce reliability standards. It would be improper to require interested stakeholders to fund other activities as a condition to their membership in WECC. WECC may collect funds through other means (such as user fees), or may charge special membership fees to those who either choose or are required to participate in non-FPA section 215 activities, however, it may not require contributions from those who do not.

NERC-WECC Response to PP 458 and 459:

WECC has revised its Bylaws (included in Exhibit B to the Amended and Restated WECC Delegation Agreement) to eliminate the previous \$5,000 fee and instead to permit only a nominal fee. In particular, Section 12.2 now provides:

The Board may require Members and Interested Stakeholders to pay nominal annual dues consistent with applicable FERC requirements (or those of International Reliability Agreements as applicable) to cover the reasonable costs of membership and/or participation in standards development that are not funded [through its annual ERO-related budget or corresponding arrangements with Canadian or Mexican authorities]. . . In determining nominal dues, the Board may consider all relevant factors including, but not limited to, the ability of different classes of membership or Interested Stakeholders to pay such dues. The Board may also reduce, defer or eliminate the dues obligation of an individual Member or Interested Stakeholder for good cause shown.

WECC's Board did not establish an initial nominal fee in time for inclusion in its 2008 Business Plan and Budget that was submitted to NERC for review at its August 1, 2007 Board of Trustees meeting. As a result, WECC will not impose any membership fee for 2008. For future years, WECC may propose a membership fee in its annual Business Plan and Budget, based on the estimated per-member cost of membership admission, and, if such a fee is proposed, the estimated fee revenues will be backed out of the budget.

Additionally, WECC has revised its Bylaws to preclude any requirement that members or interested stakeholders pay for the costs of any non-statutory activities. Instead the costs of these activities will be funded by those who voluntarily participate in or benefit from those fees. In particular, Section 12.3 of the WECC Bylaws states:

To the extent the WECC elects to fund any activities not eligible for funding pursuant to [budgets for Section 215 or corresponding Canadian or Mexican activities], it shall do so through the use of service fees, charges or dues applicable to the persons or entities that voluntarily participate in or voluntarily benefit from such activities. Participation in or funding of such activities shall not be a condition of membership in the WECC.

April 19 Order, P 469: We accept Exhibit C to the WECC Delegation Agreement. We also identify modifications to be addressed by NERC and WECC. We agree with NERC that the WECC Standards Development Manual is generally consistent with the requirements of FPA section 215 and NERC’s *pro forma* Common Attributes. However, with regard to participation in developing reliability standards and voting eligibility, WECC’s proposal of membership as a requirement for voting on reliability standards is inconsistent with our requirement that participation in the development of reliability standards and voting on reliability standards be open and not require membership.

April 19 Order, P 470: The Commission has previously directed that membership must not be a condition for participating in reliability standard development, or for voting on the approval of a reliability standard.²⁴⁷ While, under WECC’s proposal, a requester of a new or revised reliability standard can be any person, or entity, the proposal does not otherwise extend participation or voting rights. Instead, WECC requires membership for full participation and voting on reliability standards development. WECC, moreover, has failed to offer any explanation or rationale that would support a deviation from this requirement. Accordingly, we direct WECC to make appropriate provisions in its Standards Development Manual and applicable bylaws to clarify that any interested stakeholder may participate and vote on reliability standard development.

²⁴⁷ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 172.

NERC-WECC Response to PP 469 and 470:

WECC’s Bylaws have been revised to make clear that interested stakeholders, as well as WECC members, may participate in the development of and voting on reliability standards. See Section 8.6 of the WECC Bylaws.³⁵ Corresponding changes have been made to Sections 3, 4.2, 4.6.8, 4.8.1, 8.5.4, 8.5.5.1, 8.5.5.2, 8.5.6, 8.6.1, 8.6.2, and 9.6.2. Language has also been added to WECC’s Standards Development Procedure providing that membership is not a requirement to participate in the development of, or to vote on, reliability standards. Specifically, the Standards Development Procedure allows participation and voting by “Interested Stakeholders,” who are not required to be WECC members.

³⁵ Interested Stakeholder is defined to mean either a Registered Entity or “[a]ny person or entity that ... is located or has a substantial business interest within the Western Interconnection and has a material and distinct interest in one or more Reliability Standards. The domestic use of electricity will not by itself comprise a material and distinct interest sufficient to meet the above requirement.” WECC Bylaws, Section 3.21.

April 19 Order, P 503: We direct WECC to explain its proposed clarification that, other than staff from NERC or Commission Staff, only personnel from “authorized governmental entities” may participate on a compliance audit team. WECC appears to propose that only Canadian regulators be permitted to participate on these teams along with NERC and Commission Staff, because only Canadian regulators meet WECC’s amended definition of authorized governmental entity. However, it is unclear whether WECC intends to narrow the group of individuals from governmental agencies who may participate in WECC’s compliance audits, or to make a clarification to address a particular circumstance that applies only to WECC. Accordingly, we direct WECC to clarify this matter.

NERC-WECC Response:

WECC originally incorporated the defined term “Applicable Governmental Authority” into Section 3.1.5 of the CMEP, rather than the *pro forma* language (“other regulatory bodies with regulatory authority for the Registered Entity”), to be consistent with the other WECC CMEP references to Applicable Governmental Authorities. See, e.g., CMEP Sections 3.1.1 (provision of audit schedules), 3.1.2 (provision of audit plans), 3.1.6 (provision of final audit reports), 3.4.1 (notice of completion of investigation), 5.1 (provision of notice of alleged violation). In order to avoid any issue in this regard, however, Section 3.1.5 has now been revised to reflect the *pro forma* language.

April 19 Order, P 504: We accept WECC’s proposed deviation regarding section 3.3. The *pro forma* provision states that as a result of a spot check, “compliance auditors” may be assigned. However, we agree that this provision fails to make clear that a Regional Entity may initiate a compliance audit as a result of a spot check.

NERC-WECC Response:

The last sentence of Section 3.3 of the WECC CMEP has been revised to now read: “A Compliance Audit may be initiated by the Compliance Enforcement Authority as a result of a Spot Check as necessary.”

April 19 Order, P 506: With respect to WECC’s proposed deletion of the term “direct oversight,” at section 5.0, regarding NERC’s obligation to provide direct oversight over penalties and sanctions, we required NERC, above, to identify each of the mechanisms it will use to achieve consistency in penalty determinations, including “direct oversight.” In this regard, we have directed NERC to explain the meaning of this phrase and the means by which it will

exercise this oversight. We defer a decision on WECC's proposal until we receive NERC's response.

NERC-WECC Response:

Language has been added to Section 5.0 of the WECC CMEP to track the language in the revised uniform CMEP concerning NERC's direct oversight of WECC's enforcement activities.

April 19 Order, P 507: With respect to objections to data requests, we require WECC to modify WECC's proposal to delete references, at sections 5 and 6, to requests by parties for written determinations by a NERC compliance program officer if they believe that a data request following issuance of a notice of alleged violation, or with respect to a mitigation plan, is unreasonable. We agree with Xcel that determinations by NERC compliance staff following such requests could speed up, rather than delay, these processes and help ensure consistency across Regional Entities as to the proper scope of these requests.²⁵⁴

²⁵⁴ As we found above, regarding NERC's *pro forma* attachment 2 hearing procedures, the hearing body, not a NERC compliance program officer, will determine issues relating to discovery requests in hearings relating to notices of alleged violations or other matters governed by attachment 2.

NERC-WECC Response:

The required language has been added to Sections 5.0 and 6.0 of the WECC CMEP. Consistent with footnote 254 in the April 19 Order, however, disputes concerning data requests during WECC's hearing process will be addressed by WECC, rather than by NERC.

April 19 Order, P 510: We require WECC to modify WECC's proposal to add language, at section 5.5, specifying that on appeal of a determination by WECC, NERC may either affirm WECC or remand the matter to WECC, but may not modify the terms of WECC's determination. This limitation would prevent NERC from carrying out its obligation to oversee Regional Entity compliance activities and to provide for consistency among the Regional Entities. NERC must be authorized to direct WECC to change its determinations.

NERC-WECC Response:

In P 510 as well as in P 173 (addressed earlier in this filing) of the April 19 Order, the Commission required that NERC be permitted to direct a change to a Regional Entity determination, rather than being limited to either affirming the determination or remanding with

reasons. Although P 173 relates to unappealed penalty determinations while P 510 relates to appealed determinations generally, the issues are the same.

The Commission's determination in P 510, that NERC must have authority to direct a different result, was the subject of WECC's Request for Rehearing of the April 19 Order filed on May 21, 2007. As indicated in the Request for Rehearing, WECC believes that giving NERC the ability to direct a different result would (1) discourage settlements, to the detriment of reliability, (2) invite parties to consider NERC as a *de novo* decision-maker rather than an appellate body and (3) infringe on procedural rights, to the extent the NERC-directed result overturns a settlement and there is no opportunity to litigate the underlying issues.

In the September 21 Rehearing Order, the Commission denied WECC's request for rehearing on this issue but confirmed the statement in its April 19 Order that NERC and WECC "may propose alternative language, provided that these revisions adequately address the Commission's underlying rationale or concern."³⁶ In response, WECC proposes CMEP revisions in Sections 5.5 and 5.6 that address the requirements of the April 19 Order on these issues in a manner that reflects three fundamental principles identified in WECC's rehearing request. First, NERC should only be allowed to direct a revised determination if necessary to achieve reliability-related goals that are clearly and explicitly identified by the Commission.³⁷ Second, the "direction" should be the minimum necessary to achieve the identified goal and should be implemented by the Regional Entity, in order to avoid infringing on the Regional Entities' delegated authority to hear and determine reliability enforcement disputes. Third, in

³⁶ September 21 Rehearing Order at P 26.

³⁷ The Commission indicated that NERC should have the authority to direct different results "where inconsistency among penalty determinations may otherwise result" or to avoid precluding "NERC from carrying out its obligation to oversee Regional Entity compliance activities." April 19 Order at PP 173, 510.

response to NERC's direction, the parties to the proceeding must be permitted the opportunity to litigate any issues, in order to preserve the parties' due process rights, because they may have settled or not fully litigated issues based on the expected outcome at the Regional Entity level.

April 19 Order, P 513: We require WECC to modify WECC's proposal to delete a reference in section 6.3 to a request for extension of an implementation milestone. Because registered entities reasonably may need extensions of milestones in certain circumstances, it is appropriate that section 6.3 refer specifically to a request for an extension of a milestone.

NERC-WECC Response:

Section 6.3 of the WECC CMEP has been revised to refer to milestone extension requests.

April 19 Order, P 515: Finally, WECC proposes numerous changes to correct typographical and grammatical errors. Many of these proposed changes are appropriate, but some inadvertently create additional errors. Accordingly, we direct WECC to review these submissions for typographical and other errors, make necessary corrections, and include all such corrections in the form of a revised Uniform Compliance Program.

NERC-WECC Response:

WECC has attempted to identify and correct all typographical and other errors in the WECC CMEP. In addition, numerous changes have been made in the WECC CMEP to conform to the revised NERC uniform CMEP.

April 19 Order, P 530: With respect to WECC's proposal to modify the WECC Exhibit E to allow for the assessment of interest on late payments, we find that WECC has failed to identify the interest rate that will apply and explain what it will do with the interest collected. In addition, we note that the California ISO has raised legitimate concerns regarding this provision. First, WECC's collection agents should not be held liable for any interest resulting from the payment delays of individual load serving entities given the fact that the ERO does not hold Regional Entities liable when they act as the collection agent. We also agree that the WECC Delegation Agreement is not the appropriate vehicle for addressing the rights and obligations relating to late payments for non-statutory functions. Accordingly, we direct NERC and WECC to address these matters.

NERC-WECC Response:

The interest provisions have been deleted from Sections 3(5) and 4 of Exhibit E to the Amended and Restated WECC Delegation Agreement being submitted with this filing. WECC will not collect interest without Commission approval.

April 19 Order, P 531: In the *ERO Certification* Order, the Commission approved NERC's proposal to delegate billing and collection functions to Regional Entities.²⁶⁴ However, the Commission required that appropriate safeguards be adopted in the delegation agreement to ensure that the Regional Entity will transfer the money it collects to NERC in a timely manner and that the Regional Entity will not use its position as a billing and collection agent to unduly influence NERC's decisions. The WECC Exhibit E does not address these required safeguards. Accordingly, we direct NERC and WECC to do so. To the extent that a balancing authority agrees to act as the collection agent, these safeguards must be addressed in that context as well.

²⁶⁴ *ERO Certification* Order, 116 FERC ¶ 61,062 at P 166 and P 169.

April 19 Order, P 533: With respect to the proposed deviation requiring NERC to electronically transfer WECC's and WIRAB's statutory costs within 24 hours, we are not persuaded that this proposal is either necessary or appropriate. In fact, WECC has an important role in ensuring NERC's financial security and requiring NERC to operate with this degree of turn-around may not be time or cost effective. Accordingly, because NERC and WECC have not addressed this deviation, we direct NERC and WECC to do so.

NERC-WECC Response to PP 531 and 533:

These requirements have been addressed in three ways in Exhibit E to the Amended and Restated WECC Delegation Agreement. First, Exhibit E, Section 3(1) and 3(4), has been revised to make clear that WECC will issue invoices in a timely manner, but no later than the deadlines identified in the previous version of Exhibit E approved by the Commission, and that WECC will remit collected funds to NERC in a timely manner, consistent with the previously-approved deadlines. Second, language has been added to Section 3(5) precluding WECC from using its position as billing and collection agent to influence NERC's policies or decisions. Consistent with the Commission's decisions in the CAISO Invoice Order at P 37³⁸, Section 3(5) also

³⁸ *California Independent System Operator Corp., Order Conditionally Accepting NERC/WECC Charge Invoicing Assessment*, 119 FERC ¶ 61,316 (2007).

obligates WECC to include similar safeguards in its billing and collection arrangements with balancing authorities or others. Third, the requirement that NERC electronically transfer funds back to WECC within 24 hours of receipt has been eliminated from Section 3(4) and 3(5).³⁹

April 19 Order, P 532: The *ERO Certification Order* required that a Regional Entity engaged in non-statutory activities, *i.e.*, non-FPA section 215, non-reliability regulator activities, would be required to list these activities in Exhibit E.²⁶⁵ The identification of non-statutory activities performed by a Regional Entity is necessary to ensure that such activities do not compromise the Regional Entity's oversight role or independence or present a conflict of interest regarding its oversight of transmission operators. The WECC Exhibit E fails to provide this information. Accordingly, we direct NERC and WECC to do so in the form of a revised Exhibit E. Further, the revised Exhibit E should indicate how funding of these non-statutory activities will be kept separate from funding of statutory activities.

²⁶⁵ *Id.* [*ERO Certification Order*] at P 580. By contrast, statutory costs, *i.e.*, reliability regulator-related costs, include those costs associated with all activities performed pursuant to FPA section 215 and the Commission's reliability regulations. *See* Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 at P 56 and P 65.

NERC-WECC Response:

Consistent with Exhibit E to the revised Amended and Restated *pro forma* Delegation Agreement, Exhibit E to the Amended and Restated WECC Delegation Agreement contains a new Section 5 obligating WECC to include in its annual business plan and budget submission to NERC a description of any non-statutory activities and of how WECC will separate funding and expenses for non-statutory activities from funding and expenses for statutory activities. Currently, the only WECC non-statutory activity relates to the Western Renewable Generation Information System ("WREGIS"), a system to identify and track renewable energy credits. WECC maintains separate accounts for the funding and expenses of WREGIS, and the program is currently funded through the California Energy Commission.

³⁹ Section 3(4) also includes language from the revised Exhibit E to the Amended and Restated *pro forma* Delegation Agreement that requires Regional Entities to provide NERC with certain information at the time the collections are remitted.

April 19 Order, P 534: We reject the California IOUs request that Exhibit E be revised to include an express obligation requiring load serving entities to provide the information WECC will need in connection with its billing and collection functions. First, these entities will not be parties to this agreement. Moreover, under the Commission's regulations, these entities are already required to register with NERC and the Regional Entity for each region in which they use, own or operate bulk-power system facilities. Nonetheless, we take seriously the California IOUs report that WECC's list of load serving entities, as of December 2006, may be inaccurate or incomplete. Accordingly, we direct NERC and WECC to address the status of this issue.

NERC-WECC Response:

The California IOUs' comments expressed concern as to the sufficiency of WECC's lists of load-serving entities for purposes of the compliance registry and for purposes of funding WECC's Section 215 activities.⁴⁰ Since the California IOUs' comments were filed, WECC has been working with the California IOUs and others to address registration issues. As part of this process, WECC has continually updated its list of users, owners and operators of the bulk power system with NERC. WECC has attempted to address each claim that an entity should be registered and is currently unaware of any concerns that it has not responded to claims of this nature. WECC believes it is important to address registration issues in a manner that permits input from all affected entities, and has proposed that the hearing process used for compliance enforcement be available to address these types of issues. (See §III.D.8 above.) WECC also focused attention on this issue as it prepared the supporting material for its 2008 budget request. While achieving perfect accuracy may prove elusive because of the large number of smaller entities involved, NERC and WECC believe the list of load-serving entities included with the 2008 budget submission addresses the issue raised by the California IOUs.⁴¹

⁴⁰ The two lists are not necessarily the same because the criteria for the two lists are different.

⁴¹ The 2008 ERO and Regional Entity budgets and proposed assessments to load-serving entities were filed with the Commission on August 24, 2007, and conditionally accepted by the Commission in its Order issued October 18, 2007, in Docket No. RR07-16-000. *North American Electric Reliability Corporation*, 121 FERC ¶61,057 (2007).

9. FRCC Delegation Agreement

April 19 Order, P 551: However, while NERC states that FRCC is not a user, owner or operator of the bulk-power system, FRCC is a reliability coordinator. As such, FRCC is obligated to demonstrate a strong separation between oversight and operational functions.²⁷² However, in its current configuration, both FRCC's compliance staff and reliability coordinators are hired and have their performance reviewed by FRCC management, and both have their work product reviewed by the same member committees and management personnel. The result is a lack of independence in compliance monitoring and enforcement for FRCC operational functions. Accordingly, we direct NERC and FRCC to remedy these deficiencies. If it chooses, and NERC agrees, FRCC may engage NERC to oversee the compliance and enforcement functions as they relate to FRCC's compliance with the Reliability Standards. This is one possible way to establish the strong separation we require.

²⁷² *ERO Certification Order*, 116 FERC ¶ 61,062 at P 698

NERC-FRCC Response:

FRCC has requested, and NERC has agreed, to perform the monitoring and enforcement responsibility for the functions for which FRCC is a Registered Entity. To reflect this, the following text is included in Section 3.0, "Other Decision Making Bodies," of Exhibit D to the Amended and Restated FRCC Delegation Agreement being submitted with this filing: "FRCC has engaged NERC to oversee the Compliance Monitoring and Enforcement responsibilities as related to FRCC's compliance with Reliability Standards that are applicable to the functions for which FRCC is a Registered Entity."

April 19 Order, P 552: We also require FRCC to modify FRCC's proposal to assess all members for the costs of non-statutory activities. While the Commission has stated that a Regional Entity may engage in non-statutory activities, subject to certain limits, its primary function is to develop and enforce reliability standards. It would be improper to require interested stakeholders to fund other activities as a condition to their membership in FRCC. FRCC may collect funds through other means (such as user fees), or may charge special membership fees to those who either choose or are required to participate in non-FPA section 215 activities, however, it may not require contributions from those who do not. Additionally, we require FRCC to modify FRCC's proposal to assess affiliate and adjunct members a \$5,000 annual fee. While the Commission has stated that Regional Entities may assess nominal membership fees, FRCC's fee appears to exceed this limit.²⁷³ Further, funding of all statutory activities through NERC was approved in the *Business Plan and Budget Order*. FRCC, if it wishes, may propose an appropriate fee in its annual budget filing.

²⁷³ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 171.

NERC-FRCC Response:

FRCC has modified its Bylaws (now included in Exhibit B to the Amended and Restated FRCC Delegation Agreement being submitted with this filing) to provide for two types of membership: Regional Entity membership and Services Member membership. (See Section 1.1(d) of the Bylaws.) There is no cost to join as a Regional Entity member, and any entity that meets the membership criteria outlined in Section 1.1(a) of the Bylaws may join as a Regional Entity member. The Regional Entity activities are those described in Section 1 of Exhibit E to the Amended and Restated FRCC Delegation Agreement.

April 19 Order, P 558: We also find that the FRCC Standards Development Manual unnecessarily restricts those who can request that a standard be developed or modified, participate in reliability standards development, and vote on reliability standards. These functions are restricted to FRCC members and the voting function is confined to FRCC committees whose participants must be an FRCC member. FRCC members are restricted to owners, operators of the bulk-power system, and load serving entities. End-users, whether large or small, are not represented and persons or entities with an interest are also excluded. We therefore direct NERC and FRCC to modify these provisions such that, consistent with the requirements of Order No. 672, all interested stakeholders, including those who are not FRCC members, may participate and vote on reliability standards.²⁷⁷

²⁷⁷ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 172.

NERC-FRCC Response:

As noted in the response to P 552, FRCC has modified its Bylaws to provide for two types of membership, Regional Entity membership and Services Member membership, there is no cost to join the Regional Entity activities, and any entity that meets the membership criteria in Section 1.1 of the Bylaws (the principal criterion being that the entity “has a material interest in the reliability of the bulk power system”) may become a Regional Entity member. Thus, any interested stakeholder may become a Regional Entity member of FRCC and thereafter participate and vote on reliability standards. Additionally, the FRCC Bylaws have been modified to add a “General Sector” of membership, which is open to “persons or entities that take delivery of

energy within the FRCC Region that is not purchased for resale; agents or associations representing groups of such entities that are commercial or industrial entities; agents or advocate groups representing small customers; and other persons or entities owning assets or engaging in commercial activities in the FRCC Region.” (Section 1.2(f) of the FRCC Bylaws.)

Further, FRCC has modified its Regional Reliability Standard Development Process (now included in Exhibit C to the Amended and Restated FRCC Delegation Agreement) to adopt Registered Ballot Body and Ballot Pool provisions which are modeled after the NERC procedure but use the FRCC sectors as defined in Section 1.2 of the FRCC Bylaws. Finally, the FRCC Regional Reliability Standards Development Procedure specifies that (i) “Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the reliability of the FRCC Bulk Power System has a right to participate by: a) expressing a position and its basis, b) having that position considered, c) voting on and d) having the right to appeal;” and “Participation is open to any interested party or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System. Participation shall not be conditioned upon membership in the FRCC.” Thus, to vote on proposed regional standards, a person or entity must register for the Ballot Body and Ballot Pool in one of the six industry sectors, but is not required to become a member of FRCC.

April 19 Order, P 575: We clarify that this review process will apply only to the issuance of notices of alleged violation, not to any later determination with respect to such a notice or any proposed penalty or sanction included within it. Further, with respect to a notice of alleged violation proposed to be issued to a particular registered entity, no member of the FRCC compliance committee who is employed by, or has a financial or other interest in, the registered entity or any of its affiliates may participate in the review. All such reviews must be conducted confidentially.

NERC-FRCC Response:

Section 3.0 of the FRCC CMEP has been modified (i) to remove the FRCC Compliance Committee’s ability to approve penalties and (ii) to add language to prohibit the participation of

a member of the compliance committee where that member is employed by, or has a financial or other interest in, the subject Registered Entity or any of its affiliates.

April 19 Order, P 576: Also, we direct FRCC to provide NERC with quarterly reports that set forth the number of FRCC compliance committee reviews and that, for each review: (i) provide the FRCC compliance staff's proposed notice of alleged violation; (ii) state whether the FRCC compliance committee concurred with the proposal and, if not, state the committee's objections to it; (iii) identify each member of the FRCC compliance committee who participated in the review; (iv) provide any revisions proposed by the FRCC compliance committee; and (v) state whether the FRCC compliance staff contested the revisions, and if so, provide the FRCC board compliance committee's decision. In turn, NERC must submit these quarterly reports to the Commission. We encourage FRCC to hire and train additional qualified compliance staff members.

NERC-FRCC Response:

FRCC is committed to providing the quarterly reports to NERC as specified in P 576.

April 19 Order, P 577: We accept FRCC's proposal to amend section 5.2 to require the FRCC board compliance committee to appoint a compliance advisory panel to work with a registered entity to resolve any conflicts within the 40-day period after the registered entity contests an alleged violation. We concur with NERC that this procedure may encourage settlements of matters relating to alleged violations. However, as with the FRCC compliance committee's review process for notices of alleged violations, no person who is employed by, or has a financial or other interest in, the registered entity contesting the alleged violation, or any of its affiliates, may participate in the compliance advisory panel. Nor may any members of the compliance advisory panel serve on a hearing body that presides over any subsequent hearing in the matter. Further, the compliance advisory panel process must be conducted confidentially. Finally, the FRCC compliance staff must participate in this process because its agreement is needed to achieve a settlement.

NERC-FRCC Response:

Section 5.2 of the FRCC CMEP has been revised in accordance with these directives.

Because the FRCC hearing body is the FRCC Board Compliance Committee, no person appointed to a compliance advisory panel could be a member of the hearing body.

April 19 Order, P 578: We require FRCC to modify FRCC's proposed deviations relating to its FRCC records management policy. Specifically, in section 9.1, we reject FRCC's proposal to permit "re-creation" of records required to implement the FRCC Uniform Compliance Program, rather than to require "maintenance" of these records. FRCC has not shown how it would "re-create" a record or that a "re-created" record would be identical to the original record. Nor has FRCC shown that it cannot maintain these records during the applicable record retention period.

NERC-FRCC Response:

FRCC has adopted Section 9.1 of the revised NERC uniform CMEP and has thereby eliminated these deviations.

April 19 Order, P 579: We accept FRCC's proposal, at section 1.0 and exhibit A of attachment 2, to identify the FRCC board compliance committee as the hearing body for FRCC's Compliance Program. This designation is consistent with the *pro forma* Uniform Compliance Program, at attachment 2, section 1, which provides that a committee of a compliance enforcement authority's board may constitute such a hearing body. However, in exhibit A, FRCC does not clearly identify the number of votes required to carry the vote if a quorum of committee members, rather than the full number of members, conduct a particular hearing. Consistent with our earlier ruling on this matter, with respect to the *pro forma* Uniform Compliance Program, we require FRCC to specify that a majority of a quorum of committee members carries the vote.

NERC-FRCC Response:

FRCC has adopted paragraph 1.7.8 of the new Attachment 2, Hearing Procedures, which specifies the number of votes required to carry the vote if only a quorum of hearing body members (i.e., the FRCC Board Compliance Committee), rather than the full number of hearing body members, conduct and vote on a particular hearing.

April 19 Order, P 582: We accept the FRCC's proposal, at attachment 2, section 10, to appoint a FRCC board compliance committee task force as the hearing body for expedited hearings. This task force will be comprised of three members of a hearing body that we have found to be acceptable in our discussion of FRCC's proposed attachment 2, section 1. However, we direct FRCC to explain the voting requirements with respect to the expedited hearing, consistent with our earlier determination as to the FRCC board compliance committee, and the manner in which a FRCC board compliance committee task force will be appointed.

NERC-FRCC Response:

FRCC has adopted paragraph 1.9.2 of the new Attachment 2, Hearing Procedures, which specifies that the full hearing procedures described in Sections 1.4 to 1.7 are applicable to the expedited Remedial Action Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the specific procedures for the expedited Remedial Action Directive hearing. Therefore, the applicable voting requirements are those specified in

paragraph 1.7.8 of Attachment 2. With the adoption of the new Attachment 2, the “task force” option previously provided for in section 10 of old Attachment 2 is eliminated.

April 19 Order, P 583: Finally, we observe that, in some circumstances, the deviations proposed by FRCC result in typographical or other errors. We direct FRCC to review these deviations, eliminate such errors, and submit a version of its Uniform Compliance Program that corrects them, along with a redline version that indicates changes FRCC made in this process.

NERC-FRCC Response:

FRCC has now adopted the NERC uniform CMEP including the completely new Attachment 2, Hearing Procedures, and believes these errors have been eliminated as a result.

April 19 Order, P 589: We will accept the FRCC Delegation Agreement’s proposed revisions to the *pro forma* Exhibit E. We also identify modifications to be addressed by NERC and FRCC. The *ERO Certification Order* required that if a Regional Entity is engaged in non-statutory activities, i.e., non-FPA section 215, non-reliability regulator activities, then it must list them in Exhibit E. The identification of non-statutory activities performed by a Regional Entity is necessary to ensure that such activities do not compromise the Regional Entity’s oversight role or independence or present a conflict of interest with its oversight of transmission operators. The FRCC Exhibit E fails to provide this information. Accordingly, we direct NERC and FRCC to do so in the form of a revised Exhibit E. Further, the revised Exhibit E should indicate how funding of these non-statutory activities will be kept separate from funding of statutory activities.

NERC-FRCC Response:

Exhibit E to the Amended and Restated FRCC Delegation Agreement being submitted with this filing conforms generally to Exhibit E to the Amended and Restated *pro forma* Delegation Agreement, which addresses identification, budgeting and funding for non-statutory activities performed by the Regional Entity. Specifically, Section 5 specifies that if FRCC performs any non-statutory functions, it will first provide its budget for, a detailed listing of, and a description of the funding sources for, the non-statutory activities in its annual business plan and budget submission to NERC, as well as a description of the procedures FRCC will use to ensure funding of statutory activities will remain separate from funding of non-statutory activities. The annual business plan and budget is a more appropriate document to list and discuss any non-statutory functions since those functions are subject to change on an annual

basis and if they were listed in the Delegation Agreement, re-submittal and re-approval of the Delegation Agreement would be necessary each time a non-statutory function were added, deleted or modified.

D. Regional Entity 2007 Business Plans

April 19 Order at P 598: Accordingly, when NERC and the Regional Entities submit their 2008 budget and business plans, those submittals must ensure that the differences among these budgets and business plans are minimized and that any differences are both identified and justified. To meet this objective, NERC will be required to coordinate with the Regional Entities for the purposes of providing better designations, descriptions, and criteria applicable to the NERC/Regional Entity statutory activities.

NERC Response:

NERC addressed this directive in §VIII of its filing for acceptance of the 2008 ERO and Regional Entity business plans and budgets, filed August 24, 2007 in Docket No. RR07-16-000.

V. CONCLUSION

The North American Electric Reliability Corporation respectfully requests that the Commission accept this filing as compliance with the April 19 Order in this proceeding, and that the Commission approve the (i) the Amended and Restated *Pro Forma* Delegation Agreement, (ii) the revised NERC Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure), (iii) the revisions to Sections 403, 409 and 1503 of the NERC Rules of Procedure, and (iv) the Amended and Restated Delegation Agreements between NERC and the eight Regional Entities that are submitted with this filing.

Respectfully submitted,

/s/ Rick Sergel

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Chicago, Illinois this 30th day of October, 2007.

/s/ Owen E. MacBride
Owen E. MacBride

*Attorney for North American Electric
Reliability Corporation*

ATTACHMENT 1

**CLEAN (1A) AND REDLINED (1B) VERSIONS OF
AMENDED AND RESTATED *PRO FORMA*
DELEGATION AGREEMENT**

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND [REGIONAL ENTITY]**

AMENDED AND RESTATED DELEGATION AGREEMENT (“Agreement”) made this ___ day of _____ 20XX, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the [REGIONAL ENTITY], an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and [REGIONAL ENTITY] may be individually referred to herein as “Party” or collectively as “Parties.”

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824n) (hereafter “the Act”) and, among other things, provides for the establishment of an electric reliability organization (“ERO”) to develop and enforce Reliability Standards applicable to all owners, operators, and users of the bulk power system;

WHEREAS, the Commission has adopted regulations for the implementation of the Act set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39, as adopted by Commission Order No. 672 in Docket No. RM05-30-000 on February 3, 2006 (114 FERC ¶ 61, 104; hereafter “Order 672”);

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the bulk power system, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the Commission’s regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities such as [REGIONAL ENTITY] provided that:

(A) The Regional Entity is governed by —

- (i) an independent board;
- (ii) a balanced stakeholder board; or
- (iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of bulk power system reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: “[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved”;

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, [REGIONAL ENTITY] [is/is not] organized on an Interconnection-wide basis and therefore [is/is not] entitled to the rebuttable presumptions accorded such an entity;

ATTACHMENT 1A

WHEREAS, NERC will work through [REGIONAL ENTITY] to carry out certain of its activities in furtherance of its responsibilities as the electric reliability organization under the Act; and

WHEREAS, NERC has concluded that [REGIONAL ENTITY] meets all requirements of the Act, the Commission's regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules") necessary to qualify for delegation;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and [REGIONAL ENTITY], agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the Commission's regulations, or the NERC Rules or, if not so defined, shall be defined as follows:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to [REGIONAL ENTITY] to propose and enforce Reliability Standards pursuant to the Act.

(d) [REGIONAL ENTITY] Rules means the bylaws, a rule of procedure or other organizational rule or protocol of [REGIONAL ENTITY].

(e) Reliability Standard means a requirement approved by the Commission under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system. The term includes requirements for the operation of existing bulk power system facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

2. **Representations.**

(a) For purposes of its Delegated Authority, [REGIONAL ENTITY] hereby represents and warrants to NERC that:

(i) [REGIONAL ENTITY] is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. [REGIONAL ENTITY] is governed in accordance with its bylaws by [*select appropriate*: an independent board/a balanced stakeholder board/ a combination independent and balanced stakeholder board]. Pursuant to these bylaws, no two industry sectors can control any [REGIONAL ENTITY] decision and no single industry sector can veto any [REGIONAL ENTITY] decision. The relevant portions of such bylaws are attached hereto in **Exhibit B**¹, and as so attached are in full force and effect. No other such corporate governance documents are binding upon [REGIONAL ENTITY].

(ii) As set forth in **Exhibit C** hereto², [REGIONAL ENTITY] has developed a standards development procedure, which provides the process that [REGIONAL ENTITY] may use to develop Regional Reliability Standards [and Regional Variances, if the regional entity is organized on an Interconnection-wide basis] that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto³, [REGIONAL ENTITY] has developed a regional compliance enforcement program, which provides for the enforcement of Reliability Standards within its geographic boundaries.

(b) NERC hereby represents and warrants to [REGIONAL ENTITY] that:

(i) It is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no

¹ The **Exhibit B** from each Regional Entity shall meet the requirements contained in **Exhibit B** to this pro forma Agreement.

² The **Exhibit C** from each Regional Entity shall meet the requirements contained in **Exhibit C** to this pro forma Agreement.

³ The **Exhibit D** from each Regional Entity shall meet the requirements contained in **Exhibit D** to this pro forma Agreement.

applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

- (ii) It has been certified as the ERO by the Commission pursuant to the Act.

3. Covenants.

(a) During the term of this Agreement, [REGIONAL ENTITY] shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the [REGIONAL ENTITY] Rules without NERC's approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) During the term of this agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 16 and 17 of this Agreement, NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations or programs of [REGIONAL ENTITY] under this Agreement without first obtaining the consent of [REGIONAL ENTITY], which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and [REGIONAL ENTITY] shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

4. Delegation of Authority.

(a) Based upon the representations, warranties and covenants of [REGIONAL ENTITY] in Sections 2 and 3 above, the corporate governance documents set forth in **Exhibit B**, the standards development process set forth in **Exhibit C**, and the regional compliance enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to [REGIONAL ENTITY] for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries set forth on **Exhibit A**. No further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified on **Exhibit A** that is within the United States. Any delegation of authority by governmental authorities in Canada or Mexico shall be governed by a separate agreement and is outside the scope of this Agreement; provided, however, that both [REGIONAL ENTITY] and NERC shall endeavor to ensure that this Agreement and such separate agreements are compatible.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, [REGIONAL ENTITY] shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. Reliability Standards.

(a) In connection with its Delegated Authority, [REGIONAL ENTITY] shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords [REGIONAL ENTITY] reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards [and Regional Variances, if Regional Entity is organized on an Interconnection-wide basis] through [REGIONAL ENTITY]'s process as set forth in **Exhibit C**. Proposals approved through [REGIONAL ENTITY]'s process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule 313, section 3.1 as it may be amended from time to time. The NERC board of trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed standard and submit it to the Commission for approval, or disapprove it in writing setting forth its

reasons. [REGIONAL ENTITY] may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the [INTERCONNECTION-WIDE REGIONAL ENTITY] shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the [INTERCONNECTION-WIDE REGIONAL ENTITY] during NERC's review of the proposal.

6. Enforcement.

(a) In connection with its delegated authority pursuant to this Agreement, [REGIONAL ENTITY] shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the geographic boundaries set forth in **Exhibit A** through the compliance enforcement program set forth in **Exhibit D**. NERC and [REGIONAL ENTITY] agree that this program meets all applicable requirements of the Act, Order 672 and the Commission's regulations, including, *inter alia*, the requirement for an audit program pursuant to Section 39.7(a) of the Commission's regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the Commission's regulations and the requirements for due process. [REGIONAL ENTITY] may not change its compliance enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed. Subject to the rights and limitations of Sections 16 and 17 of this Agreement, [REGIONAL ENTITY] agrees to comply with the NERC Rules in implementing this program.

(b) [REGIONAL ENTITY] shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, other pertinent facts about the violation including

circumstances surrounding the violation with any known risk to the bulk power system, when the violation was or will be mitigated, the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and [REGIONAL ENTITY] shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the owner, operator, or user of the bulk power system violated a Reliability Standard or by a settlement or other negotiated disposition. The disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(d) All appeals of penalties imposed by [REGIONAL ENTITY] shall be filed with NERC, in accordance with the NERC Rules.

(e) [REGIONAL ENTITY] shall maintain the capability to conduct investigations of potential violations of Reliability Standards and to conduct such investigations in a confidential manner.

(f) [REGIONAL ENTITY] shall maintain a program of proactive enforcement audits including procedures for spot-checks of self-reported compliance and periodic audits of all responsible entities as defined in **Exhibit D**.

(g) As part of its compliance enforcement program, [REGIONAL ENTITY] shall maintain a conflict of interest policy that assures the integrity of such program and the independence of the compliance program staff from those subject to enforcement actions.

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review [REGIONAL ENTITY]'s compliance enforcement program to ensure that: (i) the program meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

(i) [REGIONAL ENTITY] shall modify its compliance enforcement program as needed to reflect additions to, deletions from, or modifications of Reliability Standards and, subject to the rights and limitations of Sections 16 and 17 of this Agreement, shall modify its compliance enforcement program as needed: (i) to reflect amendments to the NERC Rules; (ii) to comply with NERC directives resulting from the review of compliance enforcement programs as provided in Section 6(h) of this Agreement; or (iii) to resolve a conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission.

(j) NERC shall conduct a review with the Regional Entities that provides for the exchange of information on practices, experiences, and lessons learned in the implementation of compliance enforcement programs.

7. Delegation-Related Services. NERC will engage [REGIONAL ENTITY] on its behalf to carry out certain of its activities that are in furtherance of its responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules and listed on **Exhibit E**.

8. Funding. [REGIONAL ENTITY] and NERC shall ensure that the delegated functions and related activities listed on **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NERC shall fund [REGIONAL ENTITY] activities necessary for [REGIONAL ENTITY] to carry out its Delegated Authority under this Agreement, including the functions listed on **Exhibit E**, and shall not impose any obligation or requirement regarding Delegated Authority upon [REGIONAL ENTITY] without providing appropriate funding to carry out such mandates;

(b) [REGIONAL ENTITY] and NERC agree that costs of carrying out [REGIONAL ENTITY]'s responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net energy for load, or through such other formula as is expressly provided for in the annual business plan and budget submitted by NERC and [Regional Entity] to the Commission pursuant to 18 C.F.R. §39.4, as set forth in **Exhibit E**;

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(c) NERC will ensure that the costs for its responsibilities are first allocated fairly among the interconnections and regions according to the applicability of this work to those interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a net energy for load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide [REGIONAL ENTITY] with the form for budget submittal no later than April 30 of the prior year.

(e) [REGIONAL ENTITY] shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other [REGIONAL ENTITY] activities and funding to NERC no later than June 1 of the prior fiscal year such that NERC may submit its budget to the Commission 130 days in advance of the beginning of each fiscal year. The [REGIONAL ENTITY] budget submission shall include supporting materials, including [REGIONAL ENTITY]'s complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures. NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC fiscal year budget with the actual results at the NERC and Regional Entity level. [REGIONAL ENTITY] shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts.

(f) [REGIONAL ENTITY]'s funding system shall include reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(g) NERC shall review and approve [REGIONAL ENTITY]'s budget for meeting its responsibilities under the Delegation Agreement.

(h) [REGIONAL ENTITY] shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) [REGIONAL ENTITY] shall submit audited financial statements annually including supporting materials in a form provided by NERC no later than 150 days after the end of the fiscal year.

(j) NERC shall have the right to review from time to time, in reasonable intervals but no less than every three years, the financial records of [REGIONAL ENTITY] in order to ensure that the documentation fairly represents in all material respects appropriate funding under this Agreement.

(k) **Exhibit E** to this Agreement sets forth the mechanism through which [REGIONAL ENTITY] shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which [REGIONAL ENTITY] shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of [REGIONAL ENTITY].

9. Assignment. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. [REGIONAL ENTITY] may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit [REGIONAL ENTITY] from contracting with other entities to assist it in carrying out its Delegated Authority, provided [REGIONAL ENTITY] retains control and responsibility for such Delegated Authority.

10. Default and Cure. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default

Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

11. Term and Termination.

(a) This Agreement shall become effective thirty (30) days after the date of issuance of a final Commission order approving this Agreement without requiring any changes to this Agreement unacceptable to either Party.

(b) The initial term of the Agreement shall be three (3) years, prior to which time NERC shall conduct an audit pursuant to subsections 6(e) and 7(i) to ensure that [REGIONAL ENTITY] continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If [REGIONAL ENTITY] meets such requirements, this Agreement may be renewed for another five (5) year term. If this Agreement is not renewed or becomes subject to termination for any reason, the Parties shall work to ensure a transition of [REGIONAL ENTITY]'s Delegated Authority to NERC or to another eligible entity. The termination of this Agreement shall not take effect until such transition has been effected, unless the transition period exceeds one year, at which time [REGIONAL ENTITY] may unilaterally terminate.

(c) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or

condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by [REGIONAL ENTITY] and NERC.

(d) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 12), No Third Party Beneficiaries (Section 13) and Confidentiality (Section 14) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

12. Limitation of Liability. [REGIONAL ENTITY] and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and [REGIONAL ENTITY] shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of the [REGIONAL ENTITY]'s or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that the [REGIONAL ENTITY] or NERC is found liable for gross negligence or intentional misconduct, in which case [REGIONAL ENTITY] or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

13. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

14. Confidentiality. During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy,

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disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

15. Amendment. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

16. Amendments to the NERC Rules. NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of [REGIONAL ENTITY] under this Agreement without first obtaining the consent of [REGIONAL ENTITY], which consent shall not be unreasonably withheld or delayed. To the extent [REGIONAL ENTITY] does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 17 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of [REGIONAL ENTITY] under this Agreement, [REGIONAL ENTITY] shall have the option, exercisable no later than 60 days after issuance of

such order, to terminate this Agreement. Such termination shall be effective one year following written notice by [REGIONAL ENTITY] to NERC and the Commission, or at such other time as may be mutually agreed by [REGIONAL ENTITY] and NERC.

17. Dispute Resolution. In the event a dispute arises under this Agreement between NERC and [REGIONAL ENTITY], representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 17 have been exhausted. This Section 17 shall not apply to enforcement actions against individual entities.

18. Notice. Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:

North American Electric
Reliability Corporation
116-390 Village Blvd.
Princeton, NJ 08540-5721
Attn: David Hilt
Facsimile: (609) 452-9550

If to [REGIONAL ENTITY]:

Attn:
Facsimile:

19. Governing Law. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action

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shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey for the purpose of hearing and determining any action not heard and determined by the Commission.

20. Headings. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

21. Savings Clause. Nothing in this Agreement shall be construed to preempt or limit any authority that [REGIONAL ENTITY] may have to adopt reliability requirements or take other actions to ensure reliability of the bulk power system within the geographic boundaries described in **Exhibit A** that are outside the authority delegated from NERC, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

22. Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

23. Execution of Counterparts. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the date first above written.

ATTACHMENT 1A

NORTH AMERICAN
ELECTRIC RELIABILITY CORPORATION

[REGIONAL ENTITY]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A — Regional Boundaries

Exhibit A to the delegation agreement for each Regional Entity receiving Delegated Authority shall describe the geographic or electrical boundaries covered by the proposed delegation of authority. **Exhibit A** for each Regional Entity shall reflect coordination with neighboring Regional Entities, as appropriate, to ensure that all relevant areas are either included within the geographic boundaries of a Regional Entity or specifically identified as not being within the geographic boundaries of any Regional Entity.

Exhibit B – Governance

Exhibit B shall set forth the Regional Entity’s bylaws, which NERC agrees demonstrate that the Regional Entity meets the following criteria:

CRITERION 1: The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

CRITERION 2: The Regional Entity has established rules that assure its independence of the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

CRITERION 3: If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

CRITERION 4: The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

CRITERION 5: The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

Exhibit C – Regional Standard Development Procedure

Exhibit C shall set forth the Regional Entity’s standards development procedure, which NERC agrees meets the following common attributes:

COMMON ATTRIBUTE 1

Proposed regional reliability standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA [add reference to any applicable authorities in Canada and Mexico]. No regional reliability standard shall be effective within the [Regional Entity Name] area unless filed by NERC with FERC [and applicable authorities in Canada and Mexico] and approved by FERC [and applicable authorities in Canada and Mexico].

COMMON ATTRIBUTE 2

[Regional Entity Name] regional reliability standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. A [Regional Entity Name] reliability standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. A regional reliability standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

COMMON ATTRIBUTE 3

[Regional Entity Name] regional reliability standards, when approved by FERC [add applicable authorities in Canada], shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the [Regional Entity Name] area, regardless of membership in the region.

COMMON ATTRIBUTE 4

Requester — The requester is the sponsor of the regional reliability standard request and may assist in the development of the standard. Any member of [Regional Entity Name], or group within [Regional Entity Name] shall be allowed to request that a regional reliability standard be developed, modified, or withdrawn. Additionally, any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the bulk power system in the [Regional Entity Name] area shall be allowed to request a regional reliability standard be developed, modified, or withdrawn.

COMMON ATTRIBUTE 5

[Standards or other named] committee — The [Regional Entity Name] [standards] committee manages the standards development process. The [standards] committee will consider which requests for new or revised standards shall be assigned for development (or existing standards considered for deletion). The [standards] committee will advise the [Regional Entity Name] board on standards presented for adoption.

COMMON ATTRIBUTE 6

[Alternative 6A: For a Regional Entity that chooses to vote using a balanced stakeholder committee.]

The [standards] committee is a balanced stakeholder committee, inclusive of all stakeholder interests that provide for or are materially impacted by the reliability of the bulk power system. [The [standards] committee votes to approve standards.] See Appendix A for the representation model of the [standards] committee.

[Alternative 6B: For a Regional Entity that chooses to vote using a balanced ballot body of stakeholders.]

[Registered ballot body] — The registered ballot body comprises all entities or individuals that qualify for one of the stakeholder segments; are registered with [Regional Entity Name] as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the registered ballot body is eligible to vote on standards. [Each standard action has its own ballot pool formed of interested members of the registered ballot body. Each ballot pool comprises those members of the registered ballot body that respond to a pre-ballot survey for that particular standard action indicating their desire to participate in such a ballot pool.] The representation model of the registered ballot body is provided in Appendix A.]

COMMON ATTRIBUTE 7

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

COMMON ATTRIBUTE 8

An acceptable standard request shall contain a description of the proposed regional reliability standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed standard.

COMMON ATTRIBUTE 9

Within [no greater than 60] days of receipt of a completed standard request, the [standards] committee shall determine the disposition of the standard request.

COMMON ATTRIBUTE 10

The [standards] committee may take one of the following actions:

- Accept the standard request as a candidate for development of a new standard, revision of an existing standard, or deletion of an existing standard. The [standards] committee may, at its discretion, expand or narrow the scope of the standard request under consideration. The [standards] committee shall prioritize the development of standard in relation to other proposed standards, as may be required based on the volume of requests and resources.
- Reject the standard request. If the [standards] committee rejects a standard request, a written explanation for rejection will be delivered to the requester within [no greater than 30] days of the decision.
- Remand the standard request back to the requester for additional work. The standards process manager will make reasonable efforts to assist the requester in addressing the deficiencies identified by the [standards] committee. The requester may then resubmit the modified standard request using the process above. The requester may choose to withdraw the standard request from further consideration prior to acceptance by the [standards] committee.

COMMON ATTRIBUTE 11

Any standard request that is accepted by the [standards] committee for development of a standard (or modification or deletion of an existing standard) shall be posted for public viewing on the [Regional Entity Name] website within [no greater than 30] days of acceptance by the committee.

COMMON ATTRIBUTE 12

The standards process manager shall submit the proposed members of the drafting team to the [standards] committee. The [standards] committee shall approve the drafting team membership within 60 days of accepting a standard request for development, modifying the recommendations of the standards process manager as the committee deems appropriate, and assign development of the proposed standard to the drafting team.

COMMON ATTRIBUTE 13

At the direction from the [standards] committee, the standards process manager shall facilitate the posting of the draft standard on the [Regional Entity Name] website, along with a draft implementation plan and supporting documents, for a no less than a [30]-day comment period. The standards process manager shall provide notice to [Regional Entity Name] stakeholders and other potentially interested entities, both within and outside of the [Regional Entity Name] area, of the posting using communication procedures then currently in effect or by other means as deemed appropriate.

COMMON ATTRIBUTE 14

The drafting team shall prepare a summary of the comments received and the changes made to the proposed standard as a result of these comments. The drafting team shall summarize comments that were rejected by the drafting team and the reason(s) that these comments were rejected, in part or whole. The summary, along with a response to each comment received will be posted on the [Regional Entity Name] website no later than the next posting of the proposed standard.

COMMON ATTRIBUTE 15

Upon recommendation of the drafting team, and if the [standards] committee concurs that all of the requirements for development of the standard have been met, the standards process manager shall post the proposed standard and implementation plan for ballot and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

COMMON ATTRIBUTE 16

The standards process manager shall schedule a vote by the [Regional Entity Name] [registered ballot body/[standards] committee]. The vote shall commence no sooner than [15] days and no later than [30] days following the issuance of the notice for the vote.

COMMON ATTRIBUTE 17

[Alternative 17A: For an RE that chooses to vote using a balanced stakeholder committee.]

The [standards] committee shall give due consideration to the work of the drafting team, as well as the comments of stakeholders and minority objections, in approving a proposed regional reliability standard for submittal to the [Regional Entity Name] board. The [standards]

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committee may vote to approve or not approve the standard. Alternatively, the [standards] committee may remand the standard to the drafting team for further work or form a new drafting team for that purpose.

[Alternative 17B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

The [Regional Entity Name] registered ballot body shall be able to vote on the proposed standard during a period of [not less than 10] days.

COMMON ATTRIBUTE 18

[Alternative 18A: For an RE that chooses to vote using a balanced stakeholder committee.]

The [standards] committee may not itself modify the standard without issuing a new notice to stakeholders regarding a vote of the modified standard.

[Alternative 18B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

All members of [Regional Entity Name] are eligible to participate in voting on proposed new standards, standard revisions or standard deletions. [Alternatively: Each standard action requires formation of a ballot pool of interested members of the registered ballot body.]

COMMON ATTRIBUTE 19

[Alternative 19A: For an RE that chooses to vote using a balanced stakeholder committee.]

Actions by the committee shall be recorded in the regular minutes of the committee.

[Alternative 19B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

Approval of the proposed regional reliability standard shall require a [two thirds] majority in the affirmative (affirmative votes divided by the sum of affirmative and negative votes). Abstentions and non-responses shall not count toward the results, except that abstentions may be used in the determination of a quorum. A quorum shall mean [XX%] of the members of the [registered ballot body/ballot pool] submitted a ballot.

COMMON ATTRIBUTE 20

Under no circumstances may the board substantively modify the proposed regional reliability standard.

COMMON ATTRIBUTE 21

Once a regional reliability standard is approved by the board, the standard will be submitted to NERC for approval and filing with FERC [and applicable authorities in Canada and Mexico.]

COMMON ATTRIBUTE 22

- **Open** - Participation in the development of a regional reliability standard shall be open to all organizations that are directly and materially affected by the [Regional Entity Name] bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in [Regional Entity Name], and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to the [Regional Entity Name] members and others.

COMMON ATTRIBUTE 23

- **Balanced** - The [Regional Entity Name] standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

COMMON ATTRIBUTE 24

- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system in the [Regional Entity Name] area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

COMMON ATTRIBUTE 25

- **Fair due process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

COMMON ATTRIBUTE 26

- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.

COMMON ATTRIBUTE 27

- Does not unnecessarily delay development of the proposed reliability standard.

COMMON ATTRIBUTE 28

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

COMMON ATTRIBUTE 29

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

COMMON ATTRIBUTE 30

To ensure uniformity of regional reliability standards, a regional reliability standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

COMMON ATTRIBUTE 31

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

COMMON ATTRIBUTE 32

Applicability	<p>Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.</p> <p>If not applicable to the entire [Regional Entity Name] area, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.</p>
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COMMON ATTRIBUTE 33

Measure(s)	<p>Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>
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COMMON ATTRIBUTE 34

Compliance Monitoring Process	<p>Defines for each measure:</p> <ul style="list-style-type: none"> • The specific data or information that is required to measure performance or outcomes. • The entity that is responsible for providing the data or information for measuring performance or outcomes. • The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes. • The entity that is responsible for evaluating data or
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	<p>information to assess performance or outcomes.</p> <ul style="list-style-type: none">• The time period in which performance or outcomes is measured, evaluated, and then reset.• Measurement data retention requirements and assignment of responsibility for data archiving.• Violation severity levels.
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EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM****1.1 Obligations of [Fill in Name of Regional Entity]**

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

1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program

[Describe each deviation from the NERC Compliance Monitoring and Enforcement Program required by the Regional Entity. Identify each NERC Compliance Monitoring and Enforcement Program section from which a deviation is required by the Regional Entity. For each section describe how the Regional Entity will implement its alternative, why the alternative is necessary, and how that alternative meets the obligations set forth in the NERC Rules of Procedure and Section 39.7 of FERC Order 672. Separate attachments to this **Exhibit D** may be used if the information is voluminous.]

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

[Fill in Name of Regional Entity] shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be either [Fill in Name of Regional Entity]'s board or a balanced compliance panel reporting directly to [Fill in Name of Regional Entity]'s board. [Fill in Name of Regional Entity]'s hearing body is [its board] [if not the board, insert the name of the committee or group serving as the hearing body].

[If the hearing body is a compliance panel other than the board, provide here a description of how the members of the compliance panel are selected and the qualifications to be selected for the compliance panel.]

3.0 OTHER DECISION-MAKING BODIES

If [Fill in Name of Regional Entity] uses other decision-making bodies within its compliance program, provide here a description of the function of that body to the extent not described elsewhere in the Agreement or exhibits, how the members of that body are selected, and the qualifications to be selected for that body.]

Exhibit E — Funding

1. Scope of activities funded through the ERO funding mechanism

[Regional Entity] shall include in its annual budget submission to NERC amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in the NERC Rules. These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Readiness Audit and Improvement (Section 700)
- Reliability Assessment and Performance Analysis (Section 800) (including necessary data gathering activities)
- Training and Education (Section 900)
- Situational Awareness and Infrastructure Security (Section 1000)

2. Allocation of Costs

[Regional Entity] shall allocate its dues, fees, and other charges for its activities pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method(s) of allocating and calculating such dues, fees and charges is expressly provided for in the annual business plan and budget submitted by NERC and [Regional Entity] to the Commission pursuant to 18 C.F.R. §39.4. [Regional Entity] shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities within its geographic boundaries and their proportionate net energy for load, and such other data and information as is necessary to allocate and calculate [Regional Entity's] dues, fees and charges under any such different method(s) of allocation and calculation that will be used.

3. Collection of Funding

[IF NERC WILL BILL AND COLLECT ASSESSMENTS DIRECTLY FROM LOAD-SERVING ENTITIES IN REGIONAL ENTITY'S REGION, USE THE FOLLOWING TEXT FOR SECTION 3(a):]

(a) NERC shall submit invoices to the load-serving entities identified by [Regional Entity] covering the NERC and [Regional Entity] budgets approved for collection.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

[IF THE REGIONAL ENTITY WILL ACT AS THE BILLING AND COLLECTION AGENT ON BEHALF OF NERC TO BILL AND COLLECT ASSESSMENTS FROM LOAD-SERVING ENTITIES IN REGIONAL ENTITY'S REGION, USE THE FOLLOWING TEXT FOR SECTION 3(a):]

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(a) NERC and [Regional Entity] agree that [Regional Entity] shall act as the billing and collection agent on behalf of NERC to bill and collect assessments for the costs of activities under the Act from load-serving entities (or such other entities as agreed by NERC and [Regional Entity]). [Regional Entity] agrees that it shall (i) issue all invoices to load-serving entities and other entities in a prompt and timely manner after receipt from NERC of the information needed to issue the invoices; (ii) exercise commercially reasonable efforts to collect invoices that are not paid as of the due date(s); and (iii) transfer all funds collected to NERC in a timely manner, as follows: Once per week until all billings are collected, [Regional Entity] will electronically transfer to NERC, in immediately available funds, all payments received by [Regional Entity] from load-serving entities or other entities during that week for payment of invoices. On the same day that [Regional Entity] makes each electronic transfer of funds to NERC, [Regional Entity] shall send an e-mail to the Chief Financial Officer of NERC detailing the collections being transmitted, including a listing of the load-serving entities or other entities from which payments were collected and the amount collected from each entity.

[Regional Entity] agrees that it shall not in any way use its position as billing and collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of reliability standards (including regional standards and differences), administration of the compliance monitoring and enforcement program and other compliance and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of [Regional Entity's] budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds collected to NERC in an untimely manner or other than in accordance with this Agreement.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund [Regional Entity's] costs identified in this Exhibit E in four equal quarterly payments.

4. Application of Penalties

All penalty monies received by [Regional Entity], other than penalty monies received from an operational function or division or affiliated entity of [Regional Entity] shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Any penalty monies received from an operational function or division or affiliated entity of [Regional Entity] shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

5. Budget and Funding for [Regional Entity's] Non-Statutory Activities

If [Regional Entity] performs any functions or activities other than its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this **Exhibit E** (such other functions and activities being referred to herein as "non-statutory activities"), [Regional Entity] shall provide its budget for such non-

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statutory activities to NERC at the same time that [Regional Entity] submits its annual budget request to NERC pursuant to Section 1. [Regional Entity's] budget for non-statutory activities that is provided to NERC shall contain a detailed list of [Regional Entity's] non-statutory activities, a description of the funding sources for the non-statutory activities, and a description of the procedures [Regional Entity] will use to ensure that funding of the functions and activities listed in Section 1 of this **Exhibit E** will be kept separate from funding of the non-statutory activities. [Regional Entity] agrees that no costs of non-statutory activities are to be included in the calculation of [Regional Entity's] dues, fees, and other charges for its activities pursuant to this Agreement.

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND [REGIONAL ENTITY]**

AMENDED AND RESTATED DELEGATION AGREEMENT (“Agreement”) made this ___ day of _____ ~~2006~~, 20XX, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the [REGIONAL ENTITY], an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and [REGIONAL ENTITY] may be individually referred to herein as “Party” or collectively as “Parties.”

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824n) (hereafter “the Act”) and, among other things, provides for the establishment of an electric reliability organization (“ERO”) to develop and enforce Reliability Standards applicable to all owners, operators, and users of the bulk power system;

WHEREAS, the Commission has adopted regulations for the implementation of the Act set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39, as adopted by Commission Order No. 672 in Docket No. RM05-30-000 on February 3, 2006 (114 FERC ¶ 61, 104; hereafter “Order 672”);

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the bulk power system, subject to certain delegation provisions described below;

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WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the Commission's regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities such as [REGIONAL ENTITY] provided that:

(A) The Regional Entity is governed by —

- (i) an independent board;
- (ii) a balanced stakeholder board; or
- (iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of bulk power system reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: “[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved”;

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, [REGIONAL ENTITY] [is/is not] organized on an Interconnection-wide basis and therefore [is/is not] entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through [REGIONAL ENTITY] to carry out certain of its activities in furtherance of its responsibilities as the electric reliability organization under the Act; and

WHEREAS, NERC has concluded that [REGIONAL ENTITY] meets all requirements of the Act, the Commission's regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules") necessary to qualify for delegation;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and [REGIONAL ENTITY], agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the Commission's regulations, or the NERC Rules or, if not so defined, shall be defined as follows:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to [REGIONAL ENTITY] to propose and enforce Reliability Standards pursuant to the Act.

(d) [REGIONAL ENTITY] Rules means the bylaws, a rule of procedure or other organizational rule or protocol of [REGIONAL ENTITY].

(e) Reliability Standard means a requirement approved by the Commission under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system. The term includes requirements for the operation of existing bulk power system facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

2. Representations.

(a) For purposes of its Delegated Authority, [REGIONAL ENTITY] hereby represents and warrants to NERC that:

(i) [REGIONAL ENTITY] is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. [REGIONAL ENTITY] is governed in accordance with its bylaws by [*select appropriate*: an independent board/a balanced stakeholder board/ a combination independent and balanced stakeholder board]. Pursuant to these bylaws, no two industry sectors can control any [REGIONAL ENTITY] decision and no single industry sector can veto any [REGIONAL ENTITY] decision. The relevant portions of such bylaws are attached hereto in **Exhibit B**¹, and as so attached are in full force and effect. No other such corporate governance documents are binding upon [REGIONAL ENTITY].

(ii) As set forth in **Exhibit C** hereto², [REGIONAL ENTITY] has developed a standards development procedure, which provides the process that [REGIONAL ENTITY] may use to develop Regional Reliability Standards [and Regional Variances, if the regional entity is organized on an Interconnection-wide basis] that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto³, [REGIONAL ENTITY] has developed a regional compliance enforcement program, which provides for the enforcement of Reliability Standards within its geographic boundaries.

(b) NERC hereby represents and warrants to [REGIONAL ENTITY] that:

(i) It is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no

¹ The **Exhibit B** from each Regional Entity shall meet the requirements contained in **Exhibit B** to this pro forma Agreement.

² The **Exhibit C** from each Regional Entity shall meet the requirements contained in **Exhibit C** to this pro forma Agreement.

applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) It has been certified as the ERO by the Commission pursuant to the Act.

3. Covenants.

(a) During the term of this Agreement, [REGIONAL ENTITY] shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the [REGIONAL ENTITY] Rules without NERC's approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) During the term of this agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 16 and 17 of this Agreement, NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations or programs of [REGIONAL ENTITY] under this Agreement without first obtaining the consent of [REGIONAL ENTITY], which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and [REGIONAL ENTITY] shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

4. Delegation of Authority.

(a) Based upon the representations, warranties and covenants of [REGIONAL ENTITY] in Sections 2 and 3 above, the corporate governance documents set forth in **Exhibit B**, the standards development process set forth in **Exhibit C**, and the regional compliance enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to [REGIONAL ENTITY] for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries set

³ The **Exhibit D** from each Regional Entity shall meet the requirements contained in **Exhibit D** to this pro forma Agreement.

forth on **Exhibit A**. No further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified on **Exhibit A** that is within the United States. Any delegation of authority by governmental authorities in Canada or Mexico shall be governed by a separate agreement and is outside the scope of this Agreement; provided, however, that both [REGIONAL ENTITY] and NERC shall endeavor to ensure that this Agreement and such separate agreements are compatible.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, [REGIONAL ENTITY] shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. Reliability Standards.

(a) In connection with its Delegated Authority, [REGIONAL ENTITY] shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords [REGIONAL ENTITY] reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards [and Regional Variances, if Regional Entity is organized on an Interconnection-wide basis] through [REGIONAL ENTITY]'s process as set forth in **Exhibit C**. Proposals approved through [REGIONAL ENTITY]'s process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule 313, section 3.1 as it may be amended from time to time. The NERC board of trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed standard

and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. [REGIONAL ENTITY] may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the [INTERCONNECTION-WIDE REGIONAL ENTITY] shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the [INTERCONNECTION-WIDE REGIONAL ENTITY] during NERC's review of the proposal.

6. Enforcement.

(a) In connection with its delegated authority pursuant to this Agreement, [REGIONAL ENTITY] shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the geographic boundaries set forth in **Exhibit A** through the compliance enforcement program set forth in **Exhibit D**. NERC and [REGIONAL ENTITY] agree that this program meets all applicable requirements of the Act, Order 672 and the Commission's regulations, including, *inter alia*, the requirement for an audit program pursuant to Section 39.7(a) of the Commission's regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the Commission's regulations and the requirements for due process. [REGIONAL ENTITY] may not change its compliance enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed. Subject to the rights and limitations of Sections 16 and 17 of this Agreement, [REGIONAL ENTITY] agrees to comply with the NERC Rules in implementing this program.

(b) [REGIONAL ENTITY] shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the

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violation or alleged violation occurred, other pertinent facts about the violation including circumstances surrounding the violation with any known risk to the bulk power system, when the violation was or will be mitigated, the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and [REGIONAL ENTITY] shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the owner, operator, or user of the bulk power system violated a Reliability Standard or by a settlement or other negotiated disposition. The disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(d) All appeals of penalties imposed by [REGIONAL ENTITY] shall be filed with NERC, in accordance with the NERC Rules.

(e) [REGIONAL ENTITY] shall maintain the capability to conduct investigations of potential violations of Reliability Standards and to conduct such investigations in a confidential manner.

(f) [REGIONAL ENTITY] shall maintain a program of proactive enforcement audits including procedures for spot-checks of self-reported compliance and periodic audits of all responsible entities as defined in **Exhibit D**.

(g) As part of its compliance enforcement program, [REGIONAL ENTITY] shall maintain a conflict of interest policy that assures the integrity of such program and the independence of the compliance program staff from those subject to enforcement actions.

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review [REGIONAL ENTITY]'s compliance enforcement program to ensure that: (i) the program meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of

sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

(i) [REGIONAL ENTITY] shall modify its compliance enforcement program as needed to reflect additions to, deletions from, or modifications of Reliability Standards and, subject to the rights and limitations of Sections 16 and 17 of this Agreement, shall modify its compliance enforcement program as needed: (i) to reflect amendments to the NERC Rules; (ii) to comply with NERC directives resulting from the review of compliance enforcement programs as provided in Section 6(h) of this Agreement; or (iii) to resolve a conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission.

(j) NERC shall conduct a review with the Regional Entities that provides for the exchange of information on practices, experiences, and lessons learned in the implementation of compliance enforcement programs.

7. Delegation-Related Services. NERC will engage [REGIONAL ENTITY] on its behalf to carry out certain of its activities that are in furtherance of its responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules and listed on **Exhibit E**.

8. Funding. [REGIONAL ENTITY] and NERC shall ensure that the delegated functions and related activities listed on **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NERC shall fund [REGIONAL ENTITY] activities necessary for [REGIONAL ENTITY] to carry out its Delegated Authority under this Agreement, including the functions listed on **Exhibit E**, and shall not impose any obligation or requirement regarding Delegated Authority upon [REGIONAL ENTITY] without providing appropriate funding to carry out such mandates;

(b) [REGIONAL ENTITY] and NERC agree that costs of carrying out [REGIONAL ENTITY]'s responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net energy for load, or through such other formula as is expressly provided for

in the annual business plan and budget submitted by NERC and [Regional Entity] to the Commission pursuant to 18 C.F.R. §39.4, as set forth in **Exhibit E**;

(c) NERC will ensure that the costs for its responsibilities are first allocated fairly among the interconnections and regions according to the applicability of this work to those interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a net energy for load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide [REGIONAL ENTITY] with the form for budget submittal no later than April 30 of the prior year.

(e) [REGIONAL ENTITY] shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other [REGIONAL ENTITY] activities and funding to NERC no later than June 1 of the prior fiscal year such that NERC may submit its budget to the Commission 130 days in advance of the beginning of each fiscal year. The [REGIONAL ENTITY] budget submission shall include supporting materials, including [REGIONAL ENTITY]'s complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures, ~~as well as the budget, supporting materials, and proposed allocation and method of collection for the costs of any approved regional advisory body.~~

NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC fiscal year budget with the actual results at the NERC and Regional Entity level. [REGIONAL ENTITY] shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts.

(f) [REGIONAL ENTITY]'s funding system shall include reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(g) NERC shall review and approve [REGIONAL ENTITY]'s budget for meeting its responsibilities under the Delegation Agreement.

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(h) [REGIONAL ENTITY] shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) [REGIONAL ENTITY] shall submit audited financial statements annually including supporting materials in a form provided by NERC no later than 150 days after the end of the fiscal year.

(j) NERC shall have the right to review from time to time, in reasonable intervals but no less than every three years, the financial records of [REGIONAL ENTITY] in order to ensure that the documentation fairly represents in all material respects appropriate funding under this Agreement.

(k) **Exhibit E** to this Agreement sets forth the mechanism through which [REGIONAL ENTITY] shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which [REGIONAL ENTITY] shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of [REGIONAL ENTITY].

9. Assignment. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. [REGIONAL ENTITY] may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit [REGIONAL ENTITY] from contracting with other entities to assist it in carrying out its Delegated Authority, provided [REGIONAL ENTITY] retains control and responsibility for such Delegated Authority.

10. Default and Cure. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if

such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

11. Term and Termination.

(a) This Agreement shall become effective thirty (30) days after the date of issuance of a final Commission order approving this Agreement without requiring any changes to this Agreement unacceptable to either Party.

(b) The initial term of the Agreement shall be three (3) years, prior to which time NERC shall conduct an audit pursuant to subsections 6(e) and 7(i) to ensure that [REGIONAL ENTITY] continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If [REGIONAL ENTITY] meets such requirements, this Agreement may be renewed for another five (5) year term. If this Agreement is not renewed or becomes subject to termination for any reason, the Parties shall work to ensure a transition of [REGIONAL ENTITY]'s Delegated Authority to NERC or to another eligible entity. The termination of this Agreement shall not take effect until such transition has been effected, unless the transition period exceeds one year, at which time [REGIONAL ENTITY] may unilaterally terminate.

~~(e)~~ (c) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in

good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by [REGIONAL ENTITY] and NERC.

(d) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 12), No Third Party Beneficiaries (Section 13) and Confidentiality (Section 14) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

12. Limitation of Liability. [REGIONAL ENTITY] and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and [REGIONAL ENTITY] shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of the [REGIONAL ENTITY]'s or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that the [REGIONAL ENTITY] or NERC is found liable for gross negligence or intentional misconduct, in which case [REGIONAL ENTITY] or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

13. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

14. Confidentiality. During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

15. Amendment. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

16. Amendments to the NERC Rules. NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of [REGIONAL ENTITY] under this Agreement without first obtaining the consent of [REGIONAL ENTITY], which consent shall not be unreasonably withheld or delayed. To the extent [REGIONAL ENTITY] does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 17 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the

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amendment to the NERC Rules. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of [REGIONAL ENTITY] under this Agreement, [REGIONAL ENTITY] shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by [REGIONAL ENTITY] to NERC and the Commission, or at such other time as may be mutually agreed by [REGIONAL ENTITY] and NERC.

17. Dispute Resolution. In the event a dispute arises under this Agreement between NERC and [REGIONAL ENTITY], representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 17 have been exhausted. This Section 17 shall not apply to enforcement actions against individual entities.

18. Notice. Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:

North American Electric
Reliability Corporation
116-390 Village Blvd.
Princeton, NJ 08540-5721
Attn: David Hilt
Facsimile: (609) 452-9550

If to [REGIONAL ENTITY]:

Attn:
Facsimile:

19. Governing Law. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree

not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey for the purpose of hearing and determining any action not heard and determined by the Commission.

20. Headings. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

21. Savings Clause. Nothing in this Agreement shall be construed to preempt or limit any authority that [REGIONAL ENTITY] may have to adopt reliability requirements or take other actions to ensure reliability of the bulk power system within the geographic boundaries described in **Exhibit A** that are outside the authority delegated from NERC, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

22. Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

23. Execution of Counterparts. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the date first above written.

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NORTH AMERICAN
ELECTRIC RELIABILITY CORPORATION

[REGIONAL ENTITY]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A — Regional Boundaries

Exhibit A to the delegation agreement for each Regional Entity receiving Delegated Authority shall describe the geographic or electrical boundaries covered by the proposed delegation of authority. **Exhibit A** for each Regional Entity shall reflect coordination with neighboring Regional Entities, as appropriate, to ensure that all relevant areas are either included within the geographic boundaries of a Regional Entity or specifically identified as not being within the geographic boundaries of any Regional Entity.

Exhibit B – Governance

Exhibit B shall set forth the Regional Entity’s bylaws, which NERC agrees demonstrate that the Regional Entity meets the following criteria:

CRITERION 1: The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

~~A. [INSERT NAME OF REGIONAL ENTITY] is governed by *[pick appropriate phrase]* [an independent board] [a balanced stakeholder board] [a combination independent and balanced stakeholder board].~~

~~B. [INSERT NAME OF REGIONAL ENTITY]’s bylaws specify that its board comprises the following:~~

~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE’S BYLAWS ON MAKEUP OF BOARD, INCLUDING NUMBER OF REPRESENTATIVES OF EACH SECTOR.]~~

~~*[If board includes independent members, include the following paragraph.]*~~

~~C. [INSERT NAME OF REGIONAL ENTITY]’s bylaws define “independent” as follows:~~

~~[HERE QUOTE, WITH CITATIONS, PROVISION IN RE’S BYLAWS DEFINING “INDEPENDENT”.]~~

~~[NOTE: FERC approved the following definition in its July 20 order:~~

~~An independent board member is a person (i) who is not an officer or employee of [Regional Entity], a member or an officer, director, or employee of a member of [Regional Entity], or an officer, director, or employee of any entity that would reasonably be perceived as having a direct financial interest in the outcome of [Regional Entity]’s board decisions, or (ii) who does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a [Regional Entity] board member.]~~

~~D. *[To be used only if regional entity has either a balanced stakeholder board or a hybrid board.]* [INSERT NAME OF REGIONAL ENTITY]’s bylaws achieve balance on the board because the board has [INSERT NUMBER OF SECTORS ON BOARD] and the bylaws contain the following voting provisions:~~

~~{HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S BYLAWS THAT DESCRIBE THE QUORUM AND VOTING REQUIREMENTS FOR DECISIONS BY THE BOARD.}~~

CRITERION 2: The Regional Entity has established rules that assure its independence of the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

~~{Alternative 1: For MRO, NPCC, RFC, and SERC}~~

~~A. [INSERT NAME OF REGIONAL ENTITY] is not a user, owner, or operator of bulk power system facilities.~~

~~{Alternative 2: For ERCOT and SPP}~~

~~A. [INSERT NAME OF REGIONAL ENTITY] or its affiliate is an RTO or ISO and therefore a user, owner, or operator of bulk power system facilities. [INSERT NAME OF REGIONAL ENTITY]'s bylaws, rules of procedure, and protocols establish a strong separation between [INSERT NAME OF REGIONAL ENTITY]'s oversight and operations functions, as follows:~~

~~{HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S BYLAWS, PROCEDURAL RULES, AND PROTOCOLS THAT ESTABLISH THE SEPARATION OF FUNCTIONS BETWEEN OVERSIGHT AND OPERATIONS FUNCTIONS.}~~

~~{Alternative 3: For FRCC and WECC}~~

~~A. [INSERT NAME OF REGIONAL ENTITY] provides reliability coordination services for its region. A reliability coordinator is a user, owner, or operator of bulk power system facilities. [INSERT NAME OF REGIONAL ENTITY]'s bylaws, rules of procedure, and protocols establish a strong separation between [INSERT NAME OF REGIONAL ENTITY]'s oversight and reliability coordination functions, as follows:~~

~~{HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S BYLAWS, PROCEDURAL RULES, AND PROTOCOLS THAT ESTABLISH THE SEPARATION OF FUNCTIONS BETWEEN OVERSIGHT AND RELIABILITY COORDINATION FUNCTIONS.}~~

~~B. [INSERT NAME OF REGIONAL ENTITY]'s bylaws provide for fair stakeholder representation in the selection of its directors, as follows:~~

~~{HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S BYLAWS THAT DESCRIBE HOW DIRECTORS ARE NOMINATED AND ELECTED.}~~

CRITERION 3: If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

~~[Alternative 1]~~

~~[INSERT NAME OF REGIONAL ENTITY] has no members.~~

~~[Alternative 2]~~

~~A. [INSERT NAME OF REGIONAL ENTITY] has an open membership policy that permits full and fair participation of all stakeholders through their representatives, including in the development and voting on Regional Reliability Standards, as follows:~~

~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S BYLAWS, PROCEDURAL RULES, AND PROTOCOLS RELATING TO SCOPE, RIGHTS, AND OBLIGATIONS OF MEMBERSHIP IN REGIONAL ENTITY.]~~

~~B. [INSERT NAME OF REGIONAL ENTITY] charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, as follows:~~

~~[HERE QUOTE, WITH CITATIONS, PROVISIONS IN RE'S BYLAWS, PROCEDURAL RULES, AND PROTOCOLS RELATING TO MEMBERSHIP FEES.]~~

CRITERION 4: The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

~~A. [INSERT NAME OF REGIONAL ENTITY]'s bylaws, procedural rules, and protocols assure balance in decision-making committees and subordinate organizational structures in how such groups are structured, as follows:~~

~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S BYLAWS, PROCEDURAL RULES, AND PROTOCOLS THAT DESCRIBE REQUIREMENTS REGARDING THE MAKE-UP OF DECISIONAL COMMITTEES AND SUBORDINATE ORGANIZATIONAL STRUCTURES.]~~

~~B. [INSERT NAME OF REGIONAL ENTITY]'s bylaws, procedural rules, and protocols assure balance in decision-making committees and subordinate organizational structures in how such groups make decisions, as follows:~~

~~{HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S BYLAWS, PROCEDURAL RULES, AND PROTOCOLS THAT DESCRIBE REQUIREMENTS REGARDING THE QUORUM AND VOTING REQUIREMENTS OF DECISIONAL COMMITTEES AND SUBORDINATE ORGANIZATIONAL STRUCTURES.}~~

~~C. [INSERT NAME OF REGIONAL ENTITY]'s bylaws, procedural rules, and protocols assure no two industry sectors can control any action and no one industry sector can veto any action, as follows:~~

~~{HERE QUOTE, WITH CITATIONS, PROVISIONS IN RE'S BYLAWS, PROCEDURAL RULES, AND PROTOCOLS THAT EXPRESSLY STATE NO TWO INDUSTRY SECTORS CAN CONTROL ANY ACTION AND NO ONE INDUSTRY SECTOR CAN VETO ANY ACTION.}~~

CRITERION 5: The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

~~[INSERT NAME OF REGIONAL ENTITY]'s bylaws, procedural rules, and protocols provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties, as follows:~~

~~{HERE QUOTE, WITH CITATIONS, EACH PROVISION IN RE'S BYLAWS, PROCEDURAL RULES, AND PROTOCOLS REGARDING THE BOARD, COMMITTEES, AND SUBORGANIZATIONAL STRUCTURES FOR THE FOLLOWING SUBJECTS (excluding standards development and compliance enforcement, which are covered in Exhibits C and D):~~

- ~~■—NOTICE PERIODS~~
- ~~■—AVAILABILITY OF AGENDAS AND BACKGROUND INFORMATION~~
- ~~■—OPENNESS OF MEETINGS~~
- ~~■—OPPORTUNITIES FOR PUBLIC PARTICIPATION~~
- ~~■—AVAILABILITY OF MINUTES~~
- ~~■—AMENDMENT OF BYLAWS AND PROCEDURAL RULES~~

Exhibit C – Regional Standard Development Procedure

Exhibit C shall set forth the Regional Entity’s standards development procedure, which NERC agrees meets the following common attributes:

COMMON ATTRIBUTE 1

Proposed regional reliability standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA [add reference to any applicable authorities in Canada and Mexico]. No regional reliability standard shall be effective within the [Regional Entity Name] area unless filed by NERC with FERC [and applicable authorities in Canada and Mexico] and approved by FERC [and applicable authorities in Canada and Mexico].

~~[INSERT NAME OF REGIONAL ENTITY]’s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE’S REGIONAL STANDARDS DEVELOPMENT PROCEDURE AND OTHER APPLICABLE DOCUMENTS THAT SUPPORT THIS COMMON ATTRIBUTE.]~~

~~[If regional entity’s standard development procedure differs substantively from this Common Attribute:]~~

~~[RE TO PROVIDE AN EXPLANATION OF HOW THE RE’S STANDARDS DEVELOPMENT PROCEDURE DIFFERS FROM THIS COMMON ATTRIBUTE AND A JUSTIFICATION FOR THE DIFFERENCE.]~~

COMMON ATTRIBUTE 2

[Regional Entity Name] regional reliability standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. A [Regional Entity Name] reliability standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. A regional reliability standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

~~[INSERT NAME OF REGIONAL ENTITY]’s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S REGIONAL STANDARDS DEVELOPMENT PROCEDURE AND OTHER APPLICABLE DOCUMENTS THAT SUPPORT THIS COMMON ATTRIBUTE.]~~

~~*[If regional entity's standard development procedure differs substantively from this Common Attribute:]*~~

~~[RE TO PROVIDE AN EXPLANATION OF HOW THE RE'S STANDARDS DEVELOPMENT PROCEDURE DIFFERS FROM THIS COMMON ATTRIBUTE AND A JUSTIFICATION FOR THE DIFFERENCE.]~~

COMMON ATTRIBUTE 3

[Regional Entity Name] regional reliability standards, when approved by FERC [add applicable authorities in Canada], shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the [Regional Entity Name] area, regardless of membership in the region.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S REGIONAL STANDARDS DEVELOPMENT PROCEDURE AND OTHER APPLICABLE DOCUMENTS THAT SUPPORT THIS COMMON ATTRIBUTE.]~~

~~*[If regional entity's standard development procedure differs substantively from this Common Attribute:]*~~

~~[RE TO PROVIDE AN EXPLANATION OF HOW THE RE'S STANDARDS DEVELOPMENT PROCEDURE DIFFERS FROM THIS COMMON ATTRIBUTE AND A JUSTIFICATION FOR THE DIFFERENCE.]~~

COMMON ATTRIBUTE 4

Requester — The requester is the sponsor of the regional reliability standard request and may assist in the development of the standard. Any member of [Regional Entity Name], or group within [Regional Entity Name] shall be allowed to request that a regional reliability standard be developed, modified, or withdrawn. Additionally, any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the bulk power system in the [Regional Entity Name] area shall be allowed to request a regional reliability standard be developed, modified, or withdrawn.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S REGIONAL STANDARDS DEVELOPMENT PROCEDURE AND OTHER APPLICABLE DOCUMENTS THAT SUPPORT THIS COMMON ATTRIBUTE.]~~

~~[If regional entity's standard development procedure differs substantively from this Common Attribute:]~~

~~[RE TO PROVIDE AN EXPLANATION OF HOW THE RE'S STANDARDS DEVELOPMENT PROCEDURE DIFFERS FROM THIS COMMON ATTRIBUTE AND A JUSTIFICATION FOR THE DIFFERENCE.]~~

COMMON ATTRIBUTE 5

[Standards or other named] committee — The [Regional Entity Name] [standards] committee manages the standards development process. The [standards] committee will consider which requests for new or revised standards shall be assigned for development (or existing standards considered for deletion). The [standards] committee will advise the [Regional Entity Name] board on standards presented for adoption.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S REGIONAL STANDARDS DEVELOPMENT PROCEDURE AND OTHER APPLICABLE DOCUMENTS THAT SUPPORT THIS COMMON ATTRIBUTE.]~~

~~[If regional entity's standard development procedure differs substantively from this Common Attribute:]~~

~~[RE TO PROVIDE AN EXPLANATION OF HOW THE RE'S STANDARDS DEVELOPMENT PROCEDURE DIFFERS FROM THIS COMMON ATTRIBUTE AND A JUSTIFICATION FOR THE DIFFERENCE.]~~

COMMON ATTRIBUTE 6

[Alternative 6A: For ~~an RE~~ a Regional Entity that chooses to vote using a balanced stakeholder committee.]

The [standards] committee is a balanced stakeholder committee, inclusive of all stakeholder interests that provide for or are materially impacted by the reliability of the bulk power system. [The [standards] committee votes to approve standards.] See Appendix A for the representation model of the [standards] committee.

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~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S REGIONAL STANDARDS DEVELOPMENT PROCEDURE AND OTHER APPLICABLE DOCUMENTS THAT SUPPORT THIS COMMON ATTRIBUTE.]~~

~~[If regional entity's standard development procedure differs substantively from this Common Attribute:]~~

~~[RE TO PROVIDE AN EXPLANATION OF HOW THE RE'S STANDARDS DEVELOPMENT PROCEDURE DIFFERS FROM THIS COMMON ATTRIBUTE AND A JUSTIFICATION FOR THE DIFFERENCE.]~~

[Alternative 6B: For ~~an RE~~ Regional Entity that chooses to vote using a balanced ballot body of stakeholders.]

[Registered ballot body — The registered ballot body comprises all entities or individuals that qualify for one of the stakeholder segments; are registered with [Regional Entity Name] as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the registered ballot body is eligible to vote on standards. [Each standard action has its own ballot pool formed of interested members of the registered ballot body. Each ballot pool comprises those members of the registered ballot body that respond to a pre-ballot survey for that particular standard action indicating their desire to participate in such a ballot pool.] The representation model of the registered ballot body is provided in Appendix A.]

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S REGIONAL STANDARDS DEVELOPMENT PROCEDURE AND OTHER APPLICABLE DOCUMENTS THAT SUPPORT THIS COMMON ATTRIBUTE.]~~

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COMMON ATTRIBUTE 7

[Regional Entity Name] will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in step 1, notice of comment posting period identified in step 4,

and notice for vote identified in step 5 below are concurrently posted on both the [Regional Entity Name] and NERC websites.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 8

An acceptable standard request shall contain a description of the proposed regional reliability standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed standard.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 9

Within [no greater than 60] days of receipt of a completed standard request, the [standards] committee shall determine the disposition of the standard request.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

~~{HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S REGIONAL STANDARDS DEVELOPMENT PROCEDURE AND OTHER APPLICABLE DOCUMENTS THAT SUPPORT THIS COMMON ATTRIBUTE.}~~

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COMMON ATTRIBUTE 10

The [standards] committee may take one of the following actions:

- Accept the standard request as a candidate for development of a new standard, revision of an existing standard, or deletion of an existing standard. The [standards] committee may, at its discretion, expand or narrow the scope of the standard request under consideration. The [standards] committee shall prioritize the development of standard in relation to other proposed standards, as may be required based on the volume of requests and resources.
- Reject the standard request. If the [standards] committee rejects a standard request, a written explanation for rejection will be delivered to the requester within [no greater than 30] days of the decision.
- Remand the standard request back to the requester for additional work. The standards process manager will make reasonable efforts to assist the requester in addressing the deficiencies identified by the [standards] committee. The requester may then resubmit the modified standard request using the process above. The requester may choose to withdraw the standard request from further consideration prior to acceptance by the [standards] committee.

~~{INSERT NAME OF REGIONAL ENTITY}'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 11

Any standard request that is accepted by the [standards] committee for development of a standard (or modification or deletion of an existing standard) shall be posted for public viewing on the [Regional Entity Name] website within [no greater than 30] days of acceptance by the committee.

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COMMON ATTRIBUTE 12

The standards process manager shall submit the proposed members of the drafting team to the [standards] committee. The [standards] committee shall approve the drafting team membership within 60 days of accepting a standard request for development, modifying the recommendations of the standards process manager as the committee deems appropriate, and assign development of the proposed standard to the drafting team.

~~{INSERT NAME OF REGIONAL ENTITY}'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 13

At the direction from the [standards] committee, the standards process manager shall facilitate the posting of the draft standard on the [Regional Entity Name] website, along with a draft implementation plan and supporting documents, for a no less than a [30]-day comment period. The standards process manager shall provide notice to [Regional Entity Name] stakeholders and other potentially interested entities, both within and outside of the [Regional Entity Name] area, of the posting using communication procedures then currently in effect or by other means as deemed appropriate.

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COMMON ATTRIBUTE 14

The drafting team shall prepare a summary of the comments received and the changes made to the proposed standard as a result of these comments. The drafting team shall summarize comments that were rejected by the drafting team and the reason(s) that these comments were rejected, in part or whole. The summary, along with a response to each comment received will be posted on the [Regional Entity Name] website no later than the next posting of the proposed standard.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S REGIONAL STANDARDS DEVELOPMENT PROCEDURE AND OTHER APPLICABLE DOCUMENTS THAT SUPPORT THIS COMMON ATTRIBUTE.]~~

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COMMON ATTRIBUTE 15

Upon recommendation of the drafting team, and if the [standards] committee concurs that all of the requirements for development of the standard have been met, the standards process manager shall post the proposed standard and implementation plan for ballot and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 16

The standards process manager shall schedule a vote by the [Regional Entity Name] [registered ballot body/[standards] committee]. The vote shall commence no sooner than [15] days and no later than [30] days following the issuance of the notice for the vote.

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COMMON ATTRIBUTE 17

[Alternative 17A: For an RE that chooses to vote using a balanced stakeholder committee.]

The [standards] committee shall give due consideration to the work of the drafting team, as well as the comments of stakeholders and minority objections, in approving a proposed regional reliability standard for submittal to the [Regional Entity Name] board. The [standards] committee may vote to approve or not approve the standard. Alternatively, the [standards] committee may remand the standard to the drafting team for further work or form a new drafting team for that purpose.

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~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S REGIONAL STANDARDS DEVELOPMENT PROCEDURE AND OTHER APPLICABLE DOCUMENTS THAT SUPPORT THIS COMMON ATTRIBUTE.]~~

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[Alternative 17B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

The [Regional Entity Name] registered ballot body shall be able to vote on the proposed standard during a period of [not less than 10] days.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 18

[Alternative 18A: For an RE that chooses to vote using a balanced stakeholder committee.]

The [standards] committee may not itself modify the standard without issuing a new notice to stakeholders regarding a vote of the modified standard.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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[Alternative 18B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

All members of [Regional Entity Name] are eligible to participate in voting on proposed new standards, standard revisions or standard deletions. [Alternatively: Each standard action requires formation of a ballot pool of interested members of the registered ballot body.]

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 19

[Alternative 19A: For an RE that chooses to vote using a balanced stakeholder committee.]

Actions by the committee shall be recorded in the regular minutes of the committee.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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[Alternative 19B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

Approval of the proposed regional reliability standard shall require a [two thirds] majority in the affirmative (affirmative votes divided by the sum of affirmative and negative votes). Abstentions and non-responses shall not count toward the results, except that abstentions may be used in the determination of a quorum. A quorum shall mean [XX%] of the members of the [registered ballot body/ballot pool] submitted a ballot.

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COMMON ATTRIBUTE 20

Under no circumstances may the board substantively modify the proposed regional reliability standard.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 21

Once a regional reliability standard is approved by the board, the standard will be submitted to NERC for approval and filing with FERC [and applicable authorities in Canada and Mexico.]

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 22

- **Open** - Participation in the development of a regional reliability standard shall be open to all organizations that are directly and materially affected by the [Regional Entity Name] bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in [Regional Entity Name], and shall not be unreasonably restricted on the basis of technical

qualifications or other such requirements. Meetings of drafting teams shall be open to the [Regional Entity Name] members and others.

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COMMON ATTRIBUTE 23

- **Balanced** - The [Regional Entity Name] standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 24

- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system in the [Regional Entity Name] area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 25

- **Fair due process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 26

- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 27

- Does not unnecessarily delay development of the proposed reliability standard.

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COMMON ATTRIBUTE 28

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

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COMMON ATTRIBUTE 29

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

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COMMON ATTRIBUTE 30

To ensure uniformity of regional reliability standards, a regional reliability standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

~~[INSERT NAME OF REGIONAL ENTITY]'s regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:~~

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COMMON ATTRIBUTE 31

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

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COMMON ATTRIBUTE 32

Applicability	<p>Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.</p> <p>If not applicable to the entire [Regional Entity Name] area, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.</p>
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COMMON ATTRIBUTE 33

<p>Measure(s)</p>	<p>Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>
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COMMON ATTRIBUTE 34

<p>Compliance Monitoring Process</p>	<p>Defines for each measure:</p> <ul style="list-style-type: none"> • The specific data or information that is required to measure performance or outcomes. • The entity that is responsible for providing the data or information for measuring performance or outcomes. • The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes. • The entity that is responsible for evaluating data or information to assess performance or outcomes. • The time period in which performance or outcomes is measured, evaluated, and then reset. • Measurement data retention requirements and assignment of responsibility for data archiving. • Violation severity levels.
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~~[HERE QUOTE, WITH CITATIONS, ALL PROVISIONS IN RE'S REGIONAL STANDARDS DEVELOPMENT PROCEDURE AND OTHER APPLICABLE DOCUMENTS THAT SUPPORT THIS COMMON ATTRIBUTE.]~~

~~[If regional entity's standard development procedure differs substantively from this Common Attribute:]~~

~~[RE TO PROVIDE AN EXPLANATION OF HOW THE RE'S STANDARDS DEVELOPMENT PROCEDURE DIFFERS FROM THIS COMMON ATTRIBUTE AND A JUSTIFICATION FOR THE DIFFERENCE.]~~

EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.1 Obligations of [Fill in Name of Regional Entity]

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

1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program

[Describe each deviation from the NERC Compliance Monitoring and Enforcement Program required by the Regional Entity. Identify each NERC Compliance Monitoring and Enforcement Program section from which a deviation is required by the Regional Entity. For each section describe how the Regional Entity will implement its alternative, why the alternative is necessary, and how that alternative meets the obligations set forth in the NERC Rules of Procedure and Section 39.7 of FERC Order 672. Separate attachments to this **Exhibit D** may be used if the information is voluminous.]

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

[Fill in Name of Regional Entity] shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be either [Fill in Name of Regional Entity]'s board or a balanced compliance panel reporting directly to [Fill in Name of Regional Entity]'s board. [Fill in Name of Regional Entity]'s hearing body is [its board] [if not the board, insert the name of the committee or group serving as the hearing body].

[If the hearing body is a compliance panel other than the board, provide here a description of how the members of the compliance panel are selected and the qualifications to be selected for the compliance panel.]

3.0 OTHER DECISION-MAKING BODIES

If [Fill in Name of Regional Entity] uses other decision-making bodies within its compliance program, provide here a description of the function of that body to the extent not described elsewhere in the Agreement or exhibits, how the members of that body are selected, and the qualifications to be selected for that body.]

Exhibit E — Funding

1. Scope of activities funded through the ERO funding mechanism

[Regional Entity] shall include in its annual budget submission to NERC amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in the NERC Rules. These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Readiness Audit and Improvement (Section 700)
- Reliability Assessment and Performance Analysis (Section 800) (including necessary data gathering activities)
- Training and Education (Section 900)
- Situational Awareness and Infrastructure Security (Section 1000)

2. Allocation of Costs

[Regional Entity] shall allocate its dues, fees, and other charges for its activities pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method(s) of allocating and calculating such dues, fees and charges is expressly provided for in the annual business plan and budget submitted by NERC and [Regional Entity] to the Commission pursuant to 18 C.F.R. §39.4. [Regional Entity] shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities within its geographic boundaries and their proportionate net energy for load, and such other data and information as is necessary to allocate and calculate [Regional Entity's] dues, fees and charges under any such different method(s) of allocation and calculation that will be used.

3. Collection of Funding

[IF NERC WILL BILL AND COLLECT ASSESSMENTS DIRECTLY FROM LOAD-SERVING ENTITIES IN REGIONAL ENTITY'S REGION, USE THE FOLLOWING TEXT FOR SECTION 3(a):]

(a) NERC shall submit invoices to the load-serving entities identified by [~~Region~~Regional Entity] covering the NERC and [Regional Entity] budgets approved for collection.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

[IF THE REGIONAL ENTITY WILL ACT AS THE BILLING AND COLLECTION AGENT ON BEHALF OF NERC TO BILL AND COLLECT ASSESSMENTS FROM LOAD-SERVING ENTITIES IN REGIONAL ENTITY'S REGION, USE THE FOLLOWING TEXT FOR SECTION 3(a):]

(a) NERC and [Regional Entity] agree that [Regional Entity] shall act as the billing and collection agent on behalf of NERC to bill and collect assessments for the costs of activities under the Act from load-serving entities (or such other entities as agreed by NERC and [Regional Entity]). [Regional Entity] agrees that it shall (i) issue all invoices to load-serving entities and other entities in a prompt and timely manner after receipt from NERC of the information needed to issue the invoices; (ii) exercise commercially reasonable efforts to collect invoices that are not paid as of the due date(s); and (iii) transfer all funds collected to NERC in a timely manner, as follows: Once per week until all billings are collected, [Regional Entity] will electronically transfer to NERC, in immediately available funds, all payments received by [Regional Entity] from load-serving entities or other entities during that week for payment of invoices. On the same day that [Regional Entity] makes each electronic transfer of funds to NERC, [Regional Entity] shall send an e-mail to the Chief Financial Officer of NERC detailing the collections being transmitted, including a listing of the load-serving entities or other entities from which payments were collected and the amount collected from each entity.

[Regional Entity] agrees that it shall not in any way use its position as billing and collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of reliability standards (including regional standards and differences), administration of the compliance monitoring and enforcement program and other compliance and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of [Regional Entity's] budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds collected to NERC in an untimely manner or other than in accordance with this Agreement.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund ~~each~~ [Regional Entity's] costs identified in this Exhibit E in four equal quarterly payments.

4. Application of Penalties

All penalty monies received by [Regional Entity], other than penalty monies received from an operational function or division or affiliated entity of [Regional Entity] shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Any penalty monies received from an operational function or division or affiliated entity of [Regional Entity] shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

5. Budget and Funding for [Regional Entity's] Non-Statutory Activities

If [Regional Entity] performs any functions or activities other than its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this **Exhibit E** (such other functions and activities being referred to herein as "non-statutory activities"), [Regional Entity] shall provide its budget for such non-

ATTACHMENT 1B

statutory activities to NERC at the same time that [Regional Entity] submits its annual budget request to NERC pursuant to Section 1. [Regional Entity's] budget for non-statutory activities that is provided to NERC shall contain a detailed list of [Regional Entity's] non-statutory activities, a description of the funding sources for the non-statutory activities, and a description of the procedures [Regional Entity] will use to ensure that funding of the functions and activities listed in Section 1 of this **Exhibit E** will be kept separate from funding of the non-statutory activities. [Regional Entity] agrees that no costs of non-statutory activities are to be included in the calculation of [Regional Entity's] dues, fees, and other charges for its activities pursuant to this Agreement.

ATTACHMENT 2

CLEAN (2A) AND REDLINED (2B) VERSIONS OF

REVISED NERC UNIFORM COMPLIANCE
MONITORING AND ENFORCEMENT PROGRAM

(REDLINED VERSION DOES NOT INCLUDE
ATTACHMENT 2 – HEARING PROCEDURES)

**North American Electric Reliability Corporation
Compliance Monitoring and Enforcement Program**

October 16, 2007

APPENDIX 4C TO THE RULES OF PROCEDURE

Compliance Monitoring and Enforcement Program

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ATTACHMENT 1 – PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

ATTACHMENT 2 – COMPLIANCE ENFORCEMENT AUTHORITY HEARING PROCESS

Compliance Monitoring and Enforcement Program

COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Regional Entities to monitor, assess, and enforce compliance with Reliability Standards within the United States. This is accomplished through compliance monitoring and rigorous proactive Compliance Audits. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

1.1 Definitions

- 1.1.1** Alleged Violation: A potential violation for which the Compliance Enforcement Authority has completed its accuracy and completeness review and has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2** Annual Audit Plan: A plan developed annually by the Compliance Enforcement Authority that includes the Reliability Standards and Registered Entities to be audited, the schedule of Compliance Audits, and Compliance Audit Participant requirements for the calendar year.
- 1.1.3** Applicable Governmental Authority: The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4** Complaint: An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.5** Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the requirements of applicable Reliability Standards.
- 1.1.6** Compliance Audit Participants: Registered Entities scheduled to be audited and the audit team members.
- 1.1.7** Compliance Enforcement Authority: NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.8** Compliance Violation Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.

Compliance Monitoring and Enforcement Program

- 1.1.9** Confirmed Violation: An Alleged Violation for which an entity has: 1) accepted the finding of the violation by a Regional Entity or NERC and will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.
- 1.1.10** Exception Reporting: Information provided to the Compliance Enforcement Authority by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.11** Mitigation Plan: An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority decision, Settlement Agreement, or otherwise.
- 1.1.12** NERC Compliance Registry: A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.13** NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan: The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the Compliance Enforcement Authority in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.14** Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the Compliance Enforcement Authority on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.15** Regional Compliance Registry: A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of compliance within a Regional Entity's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.

Compliance Monitoring and Enforcement Program

- 1.1.16** Regional Implementation Plan: An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the Regional Entity, (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the Regional Entity's Annual Audit Plan.
- 1.1.17** Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and Regional Compliance Registry.
- 1.1.18** Remedial Action Directive: An action (other than a penalty or sanction) required by a Compliance Enforcement Authority that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.
- 1.1.19** Required Date: The date given a Registered Entity in a notice from the Compliance Enforcement Authority by which some action by the Registered Entity is required. Such date shall provide the Registered Entity a reasonable period of time in which to take the required action, given the circumstances and the action required.
- 1.1.20** Self-Certification: Attestation by a Registered Entity of compliance or non-compliance with Reliability Standards for which Self-Certification is required by the Compliance Enforcement Authority and that are included for monitoring in the Regional Implementation Plan.
- 1.1.21** Self-Reporting: A report by a Registered Entity of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.
- 1.1.22** Spot Checking: A process in which the Compliance Enforcement Authority requests a Registered Entity to provide information to support the Registered Entity's Self-Certification, Self-Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards. Spot Checking may also be random or initiated in response to events, as described in the Reliability Standards, or by operating problems or system events. Spot Checking may require an on-site review to complete.

Compliance Monitoring and Enforcement Program

2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS

The Compliance Enforcement Authority shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure. The Compliance Enforcement Authority shall identify the owners, operators, and users of the bulk power system that meet the definition of Registered Entities within the Compliance Enforcement Authority's area of responsibility. Each Registered Entity shall inform the Compliance Enforcement Authority promptly of changes to its registration information. The Compliance Enforcement Authority shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity. The Compliance Enforcement Authority shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

The Compliance Enforcement Authority will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance matters. The Compliance Enforcement Authority will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

Each Regional Entity shall develop, maintain, and provide to NERC a Regional Compliance Registry with updates as changes occur to the registry. NERC shall maintain the NERC Compliance Registry on its web site. NERC will provide FERC and Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES

The Compliance Enforcement Authority will monitor, assess, and enforce compliance with Reliability Standards using eight (8) monitoring processes to collect information in order to make assessments of compliance: (1) Compliance Audits, (2) Self-Certifications, (3) Spot Checking, (4) Compliance Violation Investigations, (5) Self-Reporting, (6) Periodic Data Submittals, (7) Exception Reporting, and (8) Complaints. These processes are described in Sections 3.1 through 3.8 below.

Enforcement actions taken by the Compliance Enforcement Authority through the Compliance Program may include the imposition of remedial actions, sanctions, and penalties, where applicable, which shall be based on the schedule of penalties and sanctions approved for implementation by FERC and other Applicable Governmental Authorities. The imposition and acceptance of sanctions and penalties shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards. Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

Prior to reporting an Alleged Violations of Reliability Standards to NERC under Section 8.0, the Compliance Enforcement Authority may review the report of violation submitted to it by the Registered Entity, audit team, or others for accuracy and completeness. This may include a

Compliance Monitoring and Enforcement Program

review of the applicability of the Reliability Standard(s) upon the Registered Entity, a review of the Registered Entity's actions or conduct in light of the particular Reliability Standard or requirement reported to have been violated, and a review of the functions performed by the Registered Entity and the function reported to have violated the Reliability Standard or requirement. Any corrections to the report of violation are to be made by the Compliance Enforcement Authority, and the Alleged Violation is to be reported to NERC if the Compliance Enforcement Authority has confirmed that the report contains evidence indicating the Registered Entity may have violated a Reliability Standard.

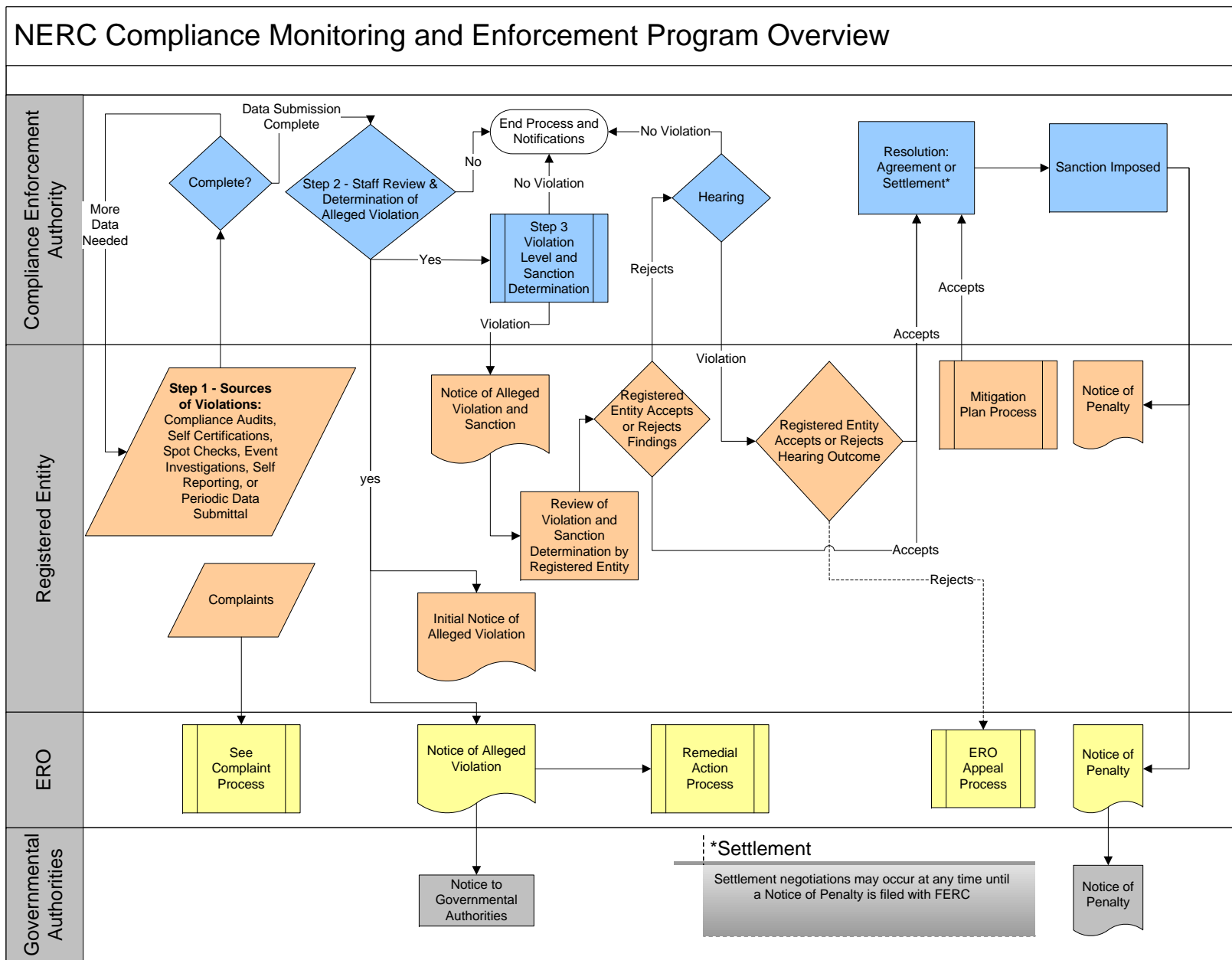
The Compliance Program requires timely data from Registered Entities to effectively monitor compliance with Reliability Standards. If data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

Any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. Electronic signatures are permitted in accordance with processes established by NERC and the Regional Entity. NERC or the Compliance Enforcement Authority may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

Figure 3.0 NERC Compliance Program Process depicts the overall process steps for the Compliance Program and each of the subsequent process diagrams are either inputs to the overall process or represent an expansion of a single process (e.g., hearing process) shown on this diagram.

Compliance Monitoring and Enforcement Program



Compliance Monitoring and Enforcement Program

3.1 Compliance Audits

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the Compliance Audit, consistent with accepted auditing guidelines as approved by NERC. The audit guides will be posted on NERC's website.

3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows and as shown on **Figure 3.1**:¹

- The Compliance Enforcement Authority distributes the Annual Audit Plan (developed in coordination with NERC) to the Compliance Audit Participants and NERC. The Compliance Enforcement Authority provides additional information to the Compliance Audit Participants, including audit materials, coordinating agendas and changes to the audit schedule as required. Prior to the Compliance Audit, the Compliance Enforcement Authority informs the Registered Entity of the Reliability Standards to be evaluated. NERC or the Regional Entity provides the audit schedules to FERC and to any other Applicable Governmental Authority based upon the agreements in place with the other Applicable Governmental Authority.
- At least two (2) months prior to commencement of a regularly scheduled Compliance Audit, the Compliance Enforcement Authority notifies the Registered Entity of the Compliance Audit, identifies the audit team members and their recent employment history, and requests data, including a completed NERC pre-audit questionnaire. If the audit team members change from the time of the original notification, the Compliance Enforcement Authority will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the member (see Section 3.1.5).
- The Registered Entity provides to the Compliance Enforcement Authority the required information in the format specified in the request.
- The audit team reviews the submitted information for conformance with the requirements of the Reliability Standards prior to performing the Compliance Audit. The audit team follows NERC audit guidelines in the implementation of the Compliance Audit. This shall include conducting an exit briefing with the Registered Entity, providing for a review of the audit report with the Registered Entity before it is finalized, and issuing an audit report, including an assessment of compliance with the Reliability Standards, to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews the report developed by the audit team and completes an assessment of any Alleged Violations with the Reliability Standards identified in the report.

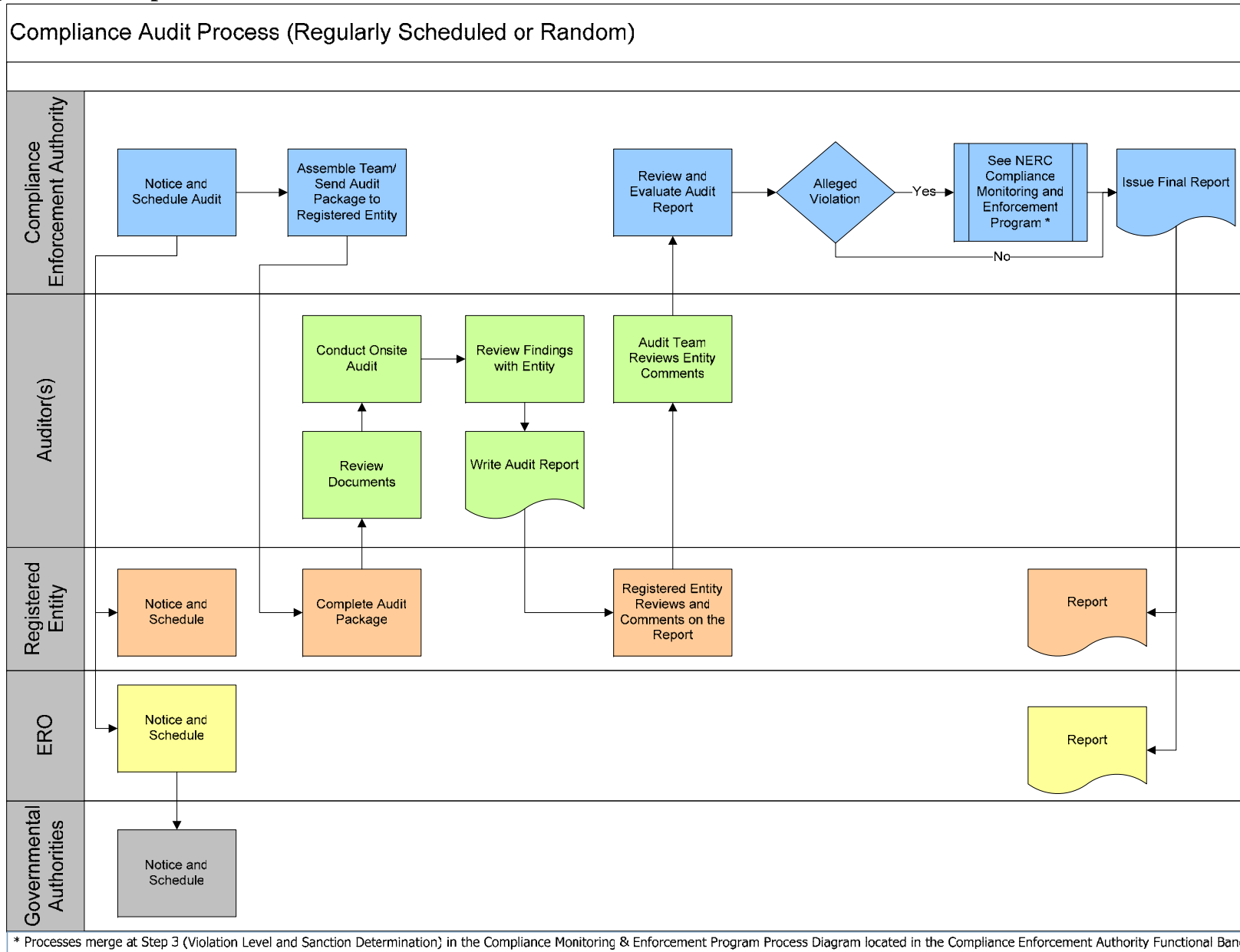
¹This process normally completes within sixty (60) days of the completion of the on-site Compliance Audit work at the Registered Entity's site.

Compliance Monitoring and Enforcement Program

- The Compliance Enforcement Authority provides the final audit report to the Registered Entity and to NERC.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

Compliance Monitoring and Enforcement Program

Figure 3.1 – Compliance Audit Process



Compliance Monitoring and Enforcement Program

3.1.2 Compliance Enforcement Authority Annual Audit Plan and Schedule

The Compliance Enforcement Authority shall develop an Annual Audit Plan. The Annual Audit Plan of Regional Entities will be included in the Regional Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or the Regional Entity provides the Annual Audit Plans to FERC and to any other Applicable Governmental Authority consistent with the agreements in place with the Applicable Governmental Authority.

Prior to January 1 of the year covered by the Annual Audit Plan, the Compliance Enforcement Authority shall notify Registered Entities subject to Compliance Audits during the upcoming year, of the audit schedules, methods, and data requirements for the audit. The Compliance Enforcement Authority will give due consideration to any schedule changes requested by Registered Entities to avoid unnecessary burdens.

Revisions and additions to a Regional Entity Annual Audit Plan shall be approved by NERC and the Registered Entity shall be notified in a timely manner (normally 60 days in advance) of changes or revisions to scheduled audit dates.

3.1.3 Frequency of Compliance Audits

The Compliance Enforcement Authority will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure based on criteria established by NERC. Additionally, an unscheduled Compliance Audit of any Registered Entity (i) may be initiated at any time by the Compliance Enforcement Authority if reasonably determined to be necessary to ensure the Registered Entities' compliance with Reliability Standards, and (ii) shall be initiated by the Compliance Enforcement Authority or by NERC if directed by FERC. The Compliance Enforcement Authority shall notify NERC and FERC that an unscheduled Compliance Audit is being initiated. The Registered Entity shall receive at least ten (10) business days advance notice that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team. The Registered Entity shall make any objections to the composition of the Compliance Audit team, which shall be based on failure to meet the criteria specified in Section 3.1.5, at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit.

3.1.4 Scope of Compliance Audits

A Compliance Audit will include all Reliability Standards applicable to the Registered Entity monitored in the NERC Implementation Plans in the current and three previous years, and may include other Reliability Standards applicable to the Registered Entity. If a Reliability Standard does not require retention of data for the full period of the Compliance Audit, the Compliance Audit will be applicable to the data retention period specified in the Reliability Standard.

3.1.5 Conduct of Compliance Audits

The audit team shall be comprised of staff personnel from the Compliance Enforcement Authority and may include contractors and industry volunteers as determined by the Compliance Enforcement Authority to be appropriate to comprise a sufficient audit team. The audit team leader shall be a staff member from the Compliance Enforcement Authority and is responsible

Compliance Monitoring and Enforcement Program

for the conduct of the Compliance Audit and preparation of the audit report. At their discretion, NERC Compliance Staff may participate on any Regional Entity Compliance Audit team either as an observer or as an audit team member as determined by the Regional Entity. Additionally, FERC and other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

- Be free of conflicts of interests. For example, employees or contractors of the Registered Entity being audited shall not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the Compliance Enforcement Authority is applicable.
- Successfully complete all NERC or NERC-approved Regional Entity auditor training applicable to the Compliance Audit. As a transitional matter, for Compliance Audits conducted prior to January 1, 2008, at least a majority of audit team members must have successfully completed such training.

Prior to the Compliance Audit, copies of executed confidentiality agreements or acknowledgements will be provided to the Registered Entity.

A Registered Entity subject to a Compliance Audit may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the Compliance Enforcement Authority no later than fifteen (15) days prior to the start of on-site audit work. This fifteen (15) day requirement shall not apply (i) where an audit team member has been appointed less than twenty (20) days prior to the start of on-site audit work, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority within five (5) business days after receiving notice of the appointment of the Compliance Audit team member; and (ii) in the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority at least five (5) business days prior to the start of start of on-site audit work for the unscheduled Compliance Audit. The Compliance Enforcement Authority will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in this paragraph shall be read to limit the participation of NERC or FERC staff in the Compliance Audit.

3.1.6 Compliance Audit Reports

The audit team shall develop a draft audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any Alleged Violations of Reliability Standards; identify any Mitigation Plans or Remedial Action Directives, which have been completed or pending in the year of the Compliance Audit; and identify the nature of any confidential information redacted. A separate document may be prepared that contains recommendations of the audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

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The audit team will consider corrections based on comments of the Registered Entity and provide the final audit report to the Compliance Enforcement Authority who will review the report and assess compliance with the Reliability Standards and provide the Registered Entity with a copy of the final report. Regional Entities will provide the final report to NERC, which will in turn provide the report to FERC and to any other Applicable Governmental Authority. The Registered Entity shall receive the final audit report at least five (5) business days prior to the release of the report to the public. Work papers and other documentation associated with the audit shall be maintained by the Compliance Enforcement Authority in accordance with NERC requirements.

In the event the audit report identifies Alleged Violations, the final audit report, or pertinent part thereof identifying the Alleged Violation(s) and any proposed penalty or sanction(s), shall not be released to the public by NERC or the Compliance Enforcement Authority until (i) NERC submits a notice of penalty to FERC, or (ii) such Alleged Violation(s) have been admitted by the Registered Entity or resolved by a settlement with the Compliance Enforcement Authority pursuant to the provisions of Section 5.0.

Information deemed by a Compliance Enforcement Authority or the Registered Entity as critical energy infrastructure information or confidential information (as defined in Section 1501 of the NERC Rules of Procedure) shall be redacted from any public reports.

3.2 Self-Certification

The Compliance Enforcement Authority may require Registered Entities to self-certify their compliance with Reliability Standards.

If a Self-Certification accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check will not subject the Registered Entity to an escalated penalty as a result of the Compliance Audit process unless the severity of the violation is found to be greater than reported by the Registered Entity in the Self-Certification.

3.2.1 Self-Certification Process Steps

The process steps for the Self-Certification process are as follows and as shown in **Figure 3.2.1**.²

- The Compliance Enforcement Authority posts and updates the reporting schedule and informs Registered Entities. The Compliance Enforcement Authority ensures that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available electronically.
- The Compliance Enforcement Authority requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).

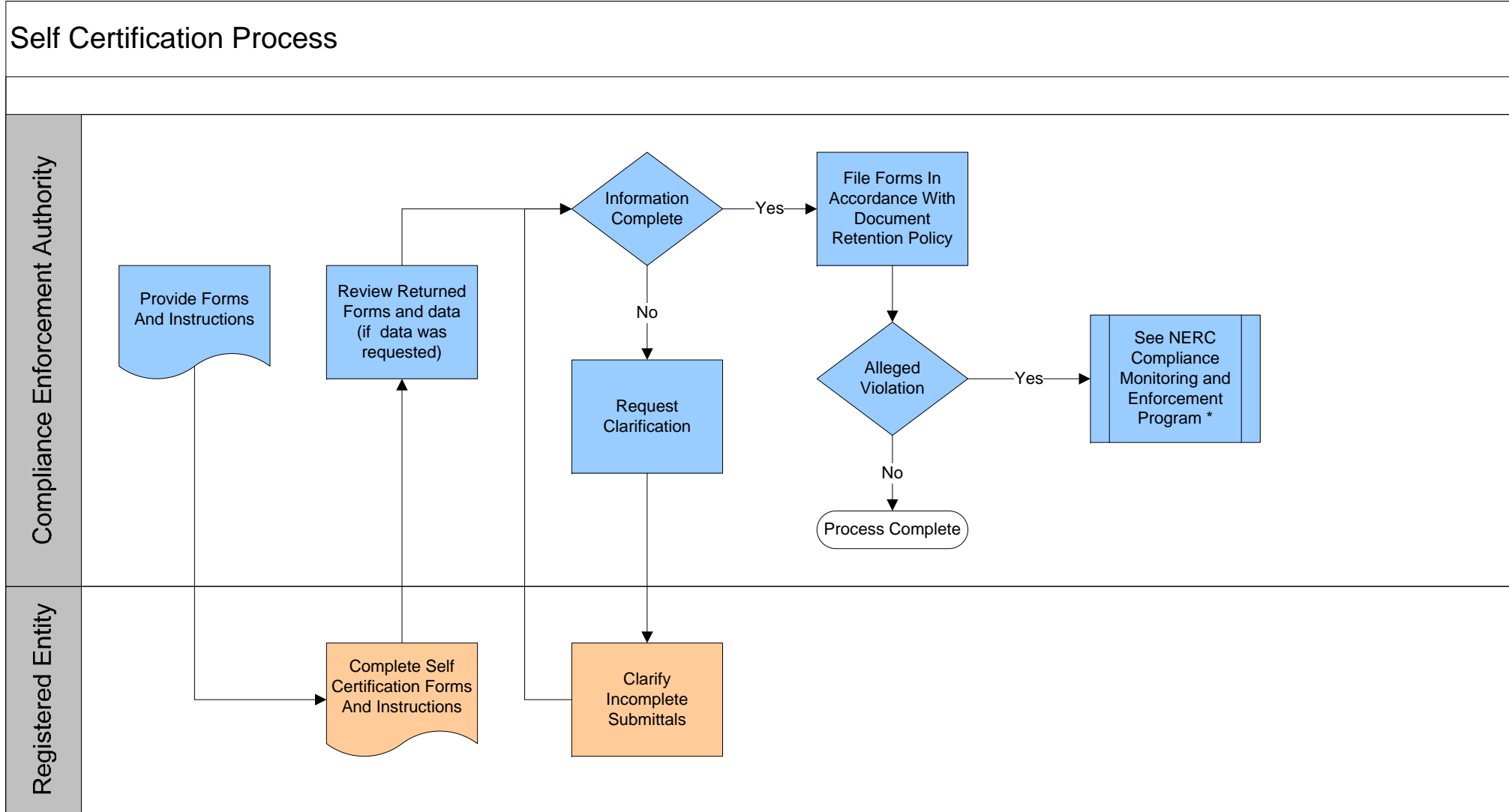
²If no non-compliances are found, this process normally completes within sixty (60) days of the Compliance Enforcement Authority's receipt of data.

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- The Registered Entity provides the required information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards and may request additional data and/or information if necessary.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard (and with the Registered Entity's Mitigation Plan, if applicable). If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

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Figure 3.2.1 – Self Certification Process



* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Function

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3.3 Spot Checking

Spot Checking will be conducted by the Compliance Enforcement Authority. Spot Checking may be initiated by the Compliance Enforcement Authority at any time to verify or confirm Self-Certifications, Self Reporting, and Periodic Data Submittals. Spot Checking may also be random or may be initiated in response to events, as described in the Reliability Standards, or by operating problems, or system events. The Compliance Enforcement Authority then reviews the information submitted to verify the Registered Entity's compliance with the Reliability Standard. Compliance auditors may be assigned by the Compliance Enforcement Authority as necessary.

3.3.1 Spot Checking Process Steps

The process steps for Spot Checking are as follows and as shown in **Figure 3.3.1**:³

- The Compliance Enforcement Authority notifies the Registered Entity that Spot Checking will be performed and the reason for the spot check within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, any information submittal request made by the Compliance Enforcement Authority will allow at least twenty (20) days for the information to be submitted or available for review.
- The spot check may require submission of data, documentation, or possibly an on-site review.
- The Registered Entity provides required information to the Compliance Enforcement Authority in the format specified in the request.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards and may request the additional data and/or information if necessary for a complete assessment of compliance.
- The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the draft assessment.
- The Compliance Enforcement Authority completes and documents the assessment of the Registered Entity for compliance with the Reliability Standard and provides a report to the Registered Entity indicating the results of the spot check.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**

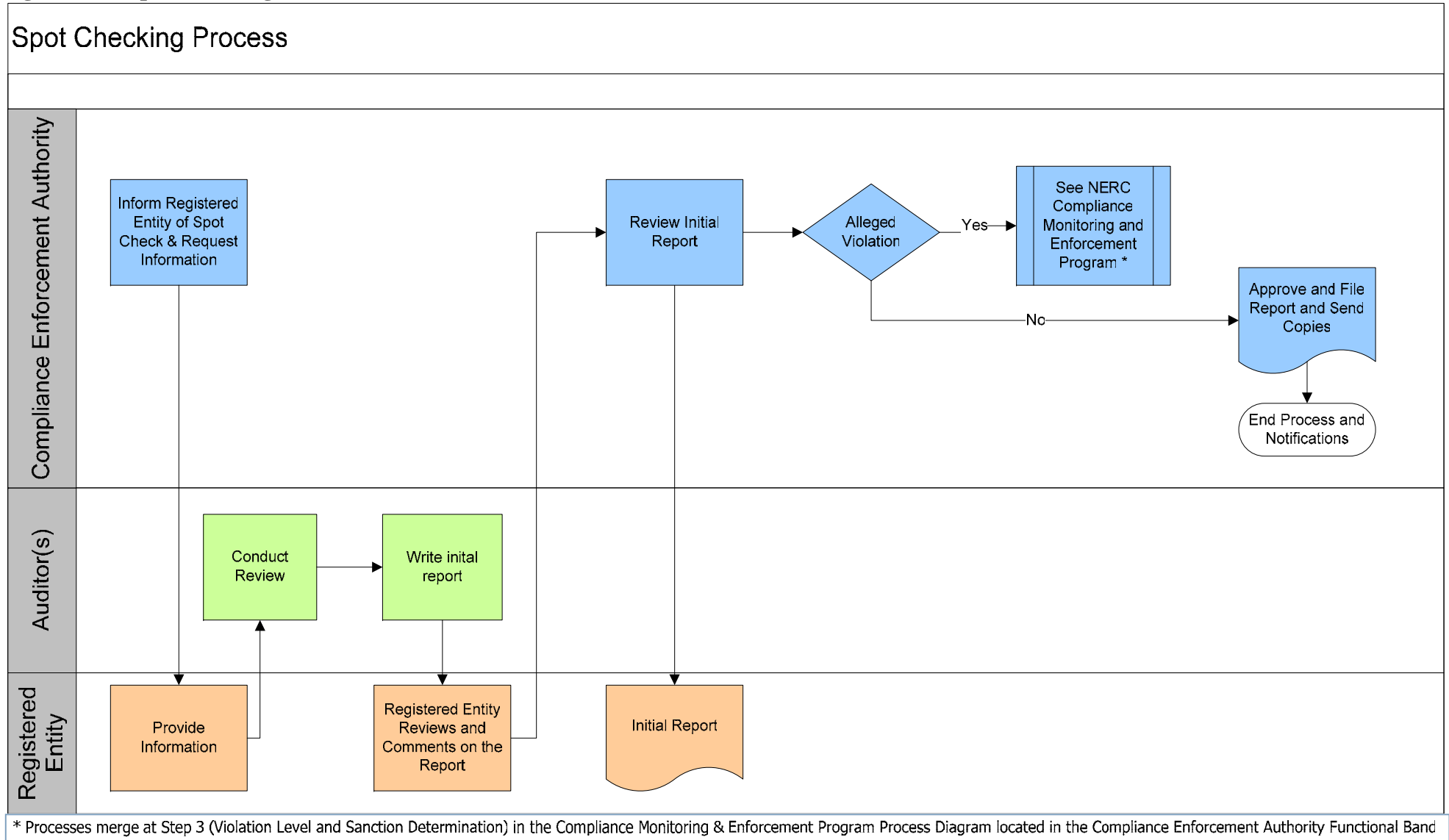
³If no alleged violations are found, this process normally completes within ninety (90) days of the Compliance Enforcement Authority's receipt of data.

Compliance Monitoring and Enforcement Program

- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



Compliance Monitoring and Enforcement Program

3.4 Compliance Violation Investigations

A Compliance Violation Investigation may be initiated at any time by the Compliance Enforcement Authority, NERC, FERC or another Applicable Governmental Authority in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means.

Compliance Violation Investigations will generally be led by the Regional Entity's staff. NERC reserves the right to assume the leadership of a Compliance Violation Investigation.⁴ The Regional Entity shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation.

Compliance Violation Investigations are confidential, unless FERC directs that a Compliance Violation Investigation should be public or that certain information obtained in the Compliance Violation Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Violation Investigation will be made public.

3.4.1 Compliance Violation Investigation Process Steps

The process steps for a Compliance Violation Investigation are as follows and as shown in **Figure 3.4.1**:⁵

- The Compliance Enforcement Authority is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted. Within two (2) business days of the decision to initiate a Compliance Violation Investigation, the Compliance Enforcement Authority: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Violation Investigation, the requirements to preserve all records and information relevant to the Compliance Violation Investigation and, where appropriate, the reasons for the Compliance Violation Investigation, and (ii) notifies NERC of the initiation of and the reasons for the Compliance Violation Investigation. While the Compliance Enforcement Authority may, at its discretion, notify the Registered Entity of the reasons for its investigation, the investigation, as it unfolds, need not be limited to this scope.
- NERC assigns a NERC staff member to the Compliance Violation Investigation and to serve as a single point of contact for communications with NERC. NERC notifies FERC or other Applicable Governmental Authorities of a Compliance Violation Investigation

⁴Examples of situations in which NERC may decide to lead a Compliance Violation Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate investigations into matters that may cross Regional Entity boundaries, (iii) where the possible violation is related to the Regional Entity or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the Regional Entity determines it cannot conduct the Compliance Violation Investigation.

⁵If no alleged violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Violation Investigation.

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within two (2) business days after NERC is notified of the decision to initiate a Compliance Violation Investigation.

- The Compliance Enforcement Authority requests data or documentation and provides a list of individuals on the investigation team and their recent employment history. The Registered Entity may object to any individual on the investigation team in accordance with Section 3.1.5; however, the Registered Entity may not object to participation by NERC, by FERC staff or by staff of another Applicable Governmental Authority on the investigation team. If the Reliability Standard does not specify the advance notice period, a request is normally issued with no less than twenty (20) days advance notice.
- Within ten (10) business days of receiving the notification of a Compliance Violation Investigation, a Registered Entity subject to an investigation may object to any member of the investigation team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the Compliance Enforcement Authority within such ten (10) business day period. The Compliance Enforcement Authority will make a final determination as to whether the individual will participate in the investigation of the Registered Entity.
- If necessary, the Compliance Violation Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format as specified in the request.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards. The Compliance Enforcement Authority may request additional data and/or information if necessary for a complete assessment or to demonstrate compliance.
- The Compliance Enforcement Authority may require the Registered Entity (i) to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the Compliance Enforcement Authority's requests for documents and information; and (ii) to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath concerning the matters under investigation.
- The Compliance Enforcement Authority completes the assessment of compliance with the Reliability Standard and/or approval of the applicable Mitigation Plan, writes and distributes the report, and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in

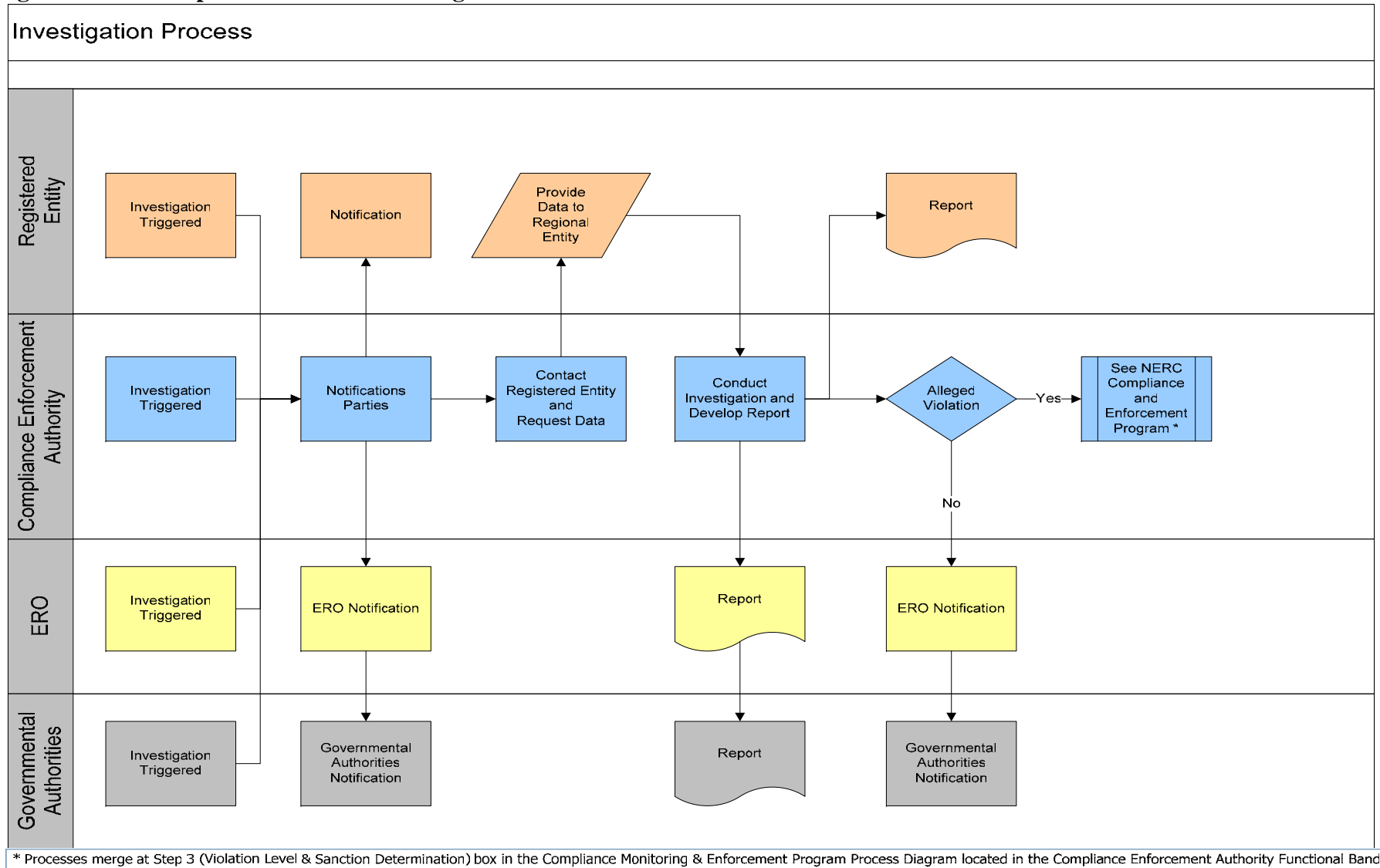
Figure 3.0

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- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.
- If the Compliance Enforcement Authority determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the investigation has been completed. NERC will in turn notify FERC and any other Applicable Governmental Authority.

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Figure 3.4.1 – Compliance Violation Investigation Process



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3.5 Self-Reporting

Self-Reporting is encouraged at the time a Registered Entity becomes aware (i) of a violation of a Reliability Standard, or (ii) a change in the violation severity level of a previously reported violation. Self-Reporting of a violation of a Reliability Standard is encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program and the violation is determined outside the pre-defined reporting schedule.

3.5.1 Self-Reporting Process Steps

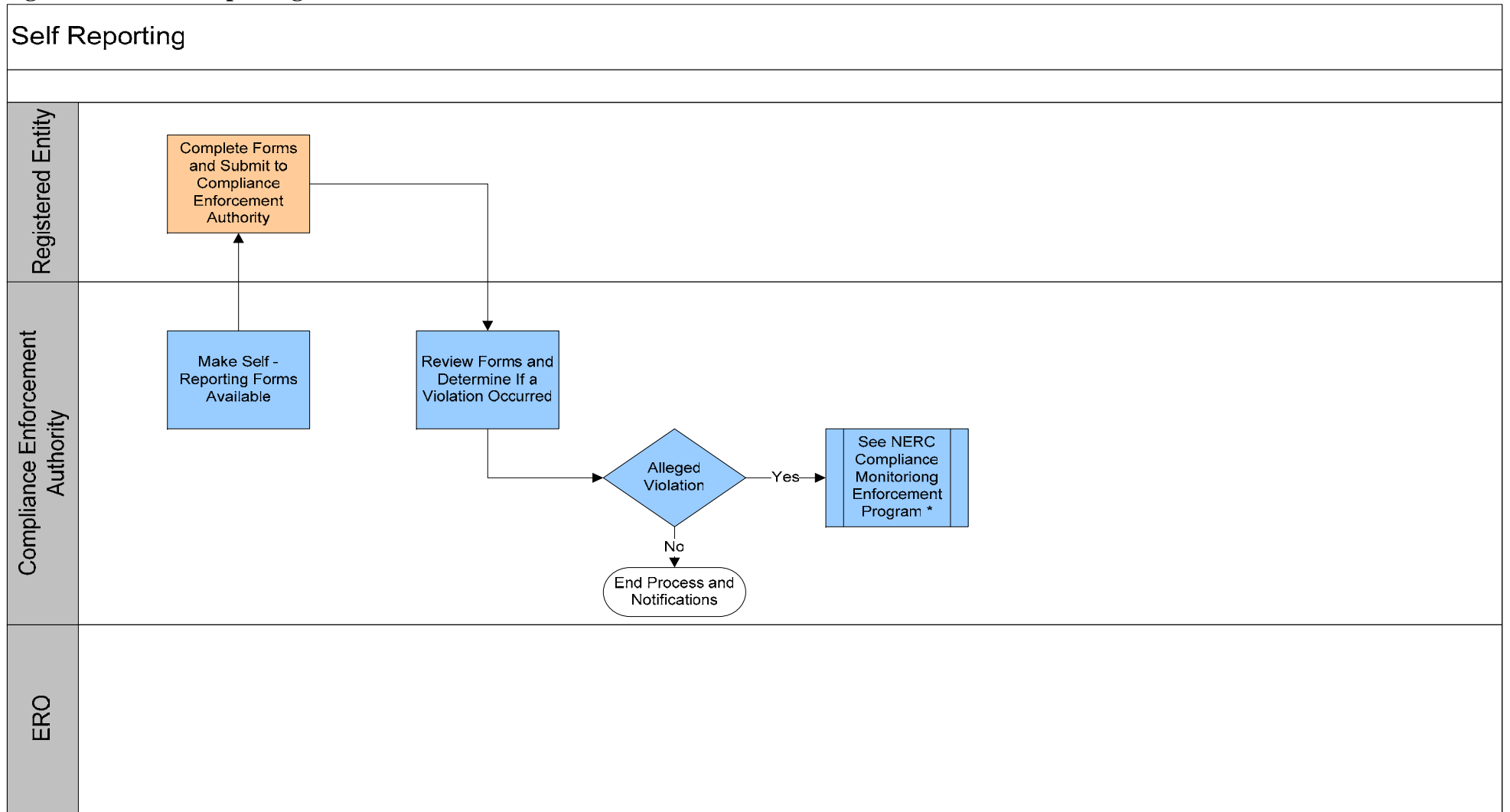
The process steps for Self-Reporting are as follows and as shown in **Figure 3.5.1**:⁶

- The Compliance Enforcement Authority posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews the information to determine compliance with the Reliability Standards and may request the Registered Entity to provide clarification or additional data and/or information.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standards and any Mitigation Plan, if applicable, and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3, Notice of Alleged Violation, of the Compliance Program Process shown in **Figure 3.0**.
- Regional Entities notify NERC of any Alleged Violations as required by Section 8.0.

⁶This process normally completes within sixty (60) days following the Compliance Enforcement Authority's receipt of data.

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Figure 3.5.1 – Self Reporting Process



* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

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3.6 Periodic Data Submittals

The Compliance Enforcement Authority requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, established by the Compliance Enforcement Authority, or on an as-needed basis. Requests for data submittals will be issued by the Compliance Enforcement Authority to Registered Entities with at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the request will normally be issued with no less than twenty (20) days advance notice.

3.6.1 Periodic Data Submittals Process Steps

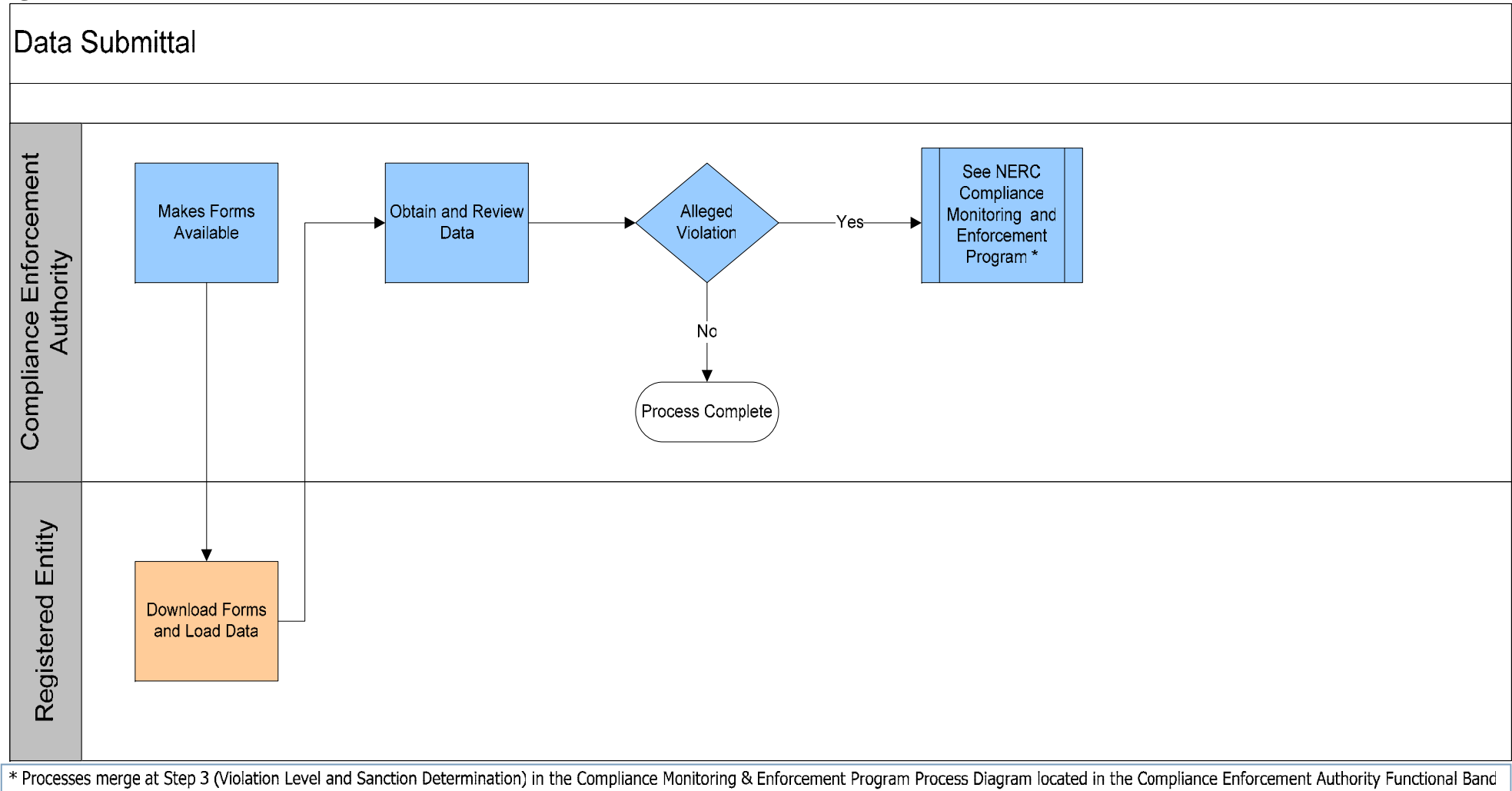
The process steps for Periodic Data Submittal are as follows and as shown in **Figure 3.6.1**:⁷

- The Compliance Enforcement Authority posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. The Compliance Enforcement Authority ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being evaluated are maintained and available via its web site.
- The Compliance Enforcement Authority makes a request for a Periodic Data Submittal.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format as specified in the request.
- The Compliance Enforcement Authority reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information for a complete assessment or to demonstrate compliance.
- The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities notify NERC of any Alleged Violations as required by Section 8.0.

⁷If no violation(s) are found, this process generally completes within ten (10) business days of the Compliance Enforcement Authority's receipt of data.

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Figure 3.6.1 – Data Submittal Process



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3.7 Exception Reporting

Some Reliability Standards require reporting of exceptions to compliance with the Reliability Standard as a form of compliance monitoring. The Compliance Enforcement Authority shall require Registered Entities to provide reports identifying any exceptions to the extent required by any Reliability Standard.

The Compliance Enforcement Authority shall also require Registered Entities to confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.

3.8 Complaints

Either NERC or Regional Entities may receive Complaints alleging violations of a Reliability Standard. A Regional Entity will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for a Compliance Violation Investigation, except that NERC will review any Complaint (1) that is related to a Regional Entity or its affiliates, divisions, committees or subordinate structures, (2) where the Regional Entity determines it cannot conduct the review, or (3) if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.

If the Complaint is submitted to NERC, NERC will forward the information to the Regional Entity, as appropriate.

All anonymous Complaints will be reviewed and any resulting Compliance Violation Investigations conducted by NERC will be conducted in accordance with Section 3.8.2 to prevent disclosure of the identity of the complainant.

The Compliance Enforcement Authority conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint to determine if it provides sufficient basis for a Compliance Violation Investigation. The Regional Entity will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, the Compliance Enforcement Authority determines that a Compliance Violation Investigation is warranted, a Compliance Violation Investigation will be conducted in accordance with Section 3.4.

3.8.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows and as shown in **Figure 3.8.1**.⁸

- The complainant notifies NERC or a Regional Entity using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. A link to the Complaint reporting form will be posted on the NERC and Regional Entity Web sites.

⁸If no violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.

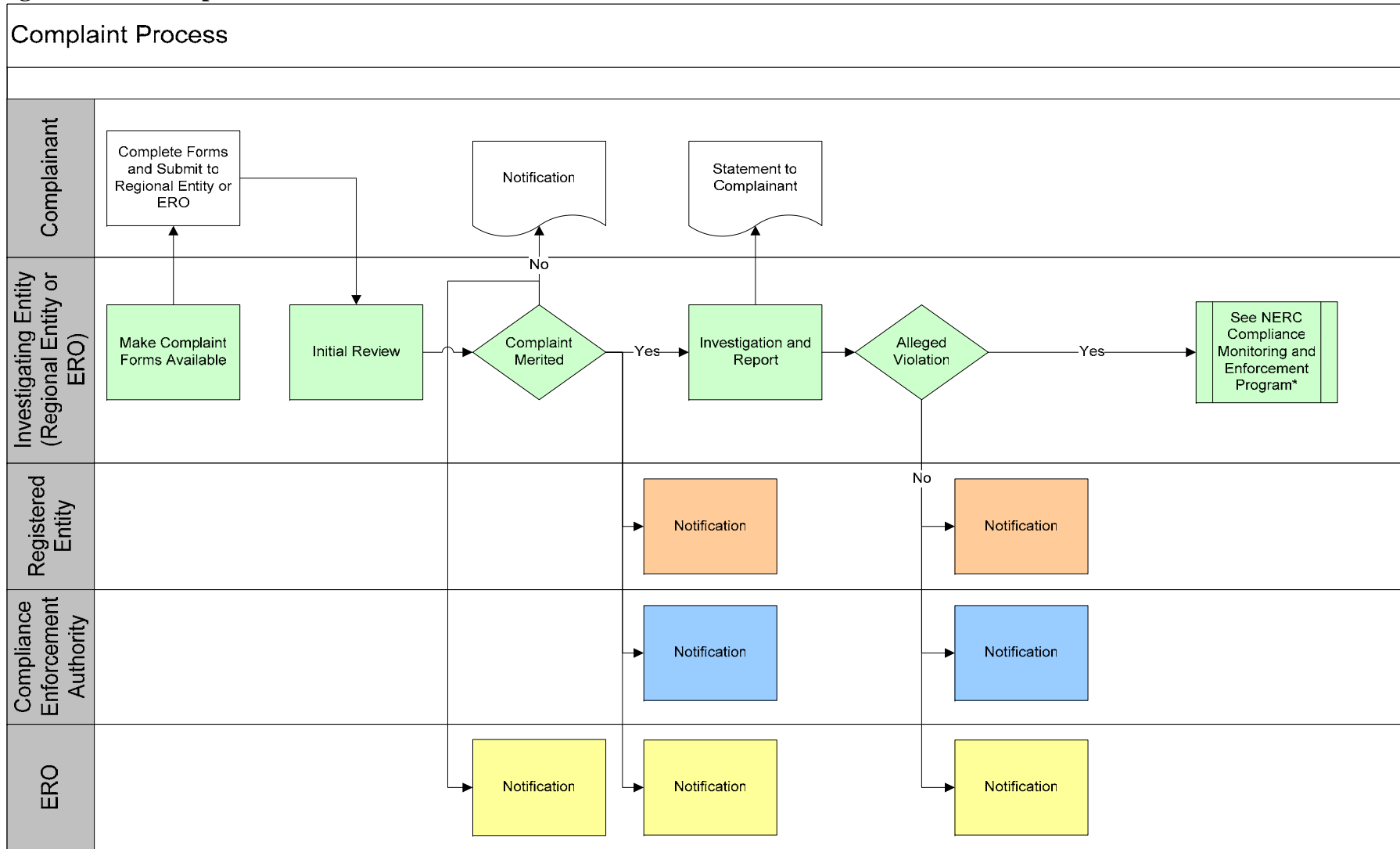
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The Complaint should include sufficient information to enable NERC or the Regional Entity to make an assessment of whether the initiation of a Compliance Violation Investigation is warranted. NERC or the Regional Entity may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.

- If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is warranted, it initiates the Compliance Violation Investigation in accordance with Section 3.4; otherwise it takes no further action. The Compliance Enforcement Authority notifies the complainant, the Registered Entity, and NERC of the Compliance Violation Investigation. If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.
- The Compliance Enforcement Authority fully documents the Complaint and the Complaint review, whether a Compliance Violation Investigation is initiated or not.

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Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

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3.8.2 Anonymous Complainant Notification Procedure

An anonymous complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, can report the possible violation and request that the complainant's identity not be disclosed.⁹ All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.8.1. Anonymous Complaints received by a Regional Entity will either be directed to NERC or the Regional Entity will collect and forward the information to NERC, at the Regional Entity's discretion. Neither NERC nor the Regional Entity shall disclose the identity of any person or entity reporting possible violations to NERC or to a Regional Entity that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where a Regional Entity collects the information, by NERC and the Regional Entity. If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

4.0 ANNUAL IMPLEMENTATION PLANS

4.1 NERC Compliance Monitoring and Enforcement Program Implementation Plan

NERC will maintain and update the NERC Implementation Plan, to be carried out by Compliance Enforcement Authorities in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the Regional Entities by October 1 of each year and will specify the Reliability Standards requiring reporting by Registered Entities to the Compliance Enforcement Authority to provide verification of compliance through one of the monitoring methods described in this Compliance Plan document. The NERC Implementation Plan will be posted on the NERC web site.

4.2 Regional Entity Implementation Plan

By November 1 of each year, Regional Entities will submit a Regional Implementation Plan for the following calendar year to NERC for approval. The Regional Implementation Plan and the Regional Entity's other relevant Compliance Program documents shall be posted on the Regional Entity's Web site.

5.0 ENFORCEMENT ACTIONS

The Compliance Enforcement Authority shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the Compliance Enforcement Authority's area of responsibility, and (ii) if so, the appropriate remedial actions, and penalties and sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction Guidelines* by Regional Entities by direct oversight and review of penalties and sanctions, and each Regional

⁹NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see www.nerc.com for additional information).

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Entity shall provide to NERC such information as is requested by NERC concerning any penalty, sanction, or remedial actions imposed by the Regional Entity.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

5.1 Notification to Registered Entity of Alleged Violation

If the Compliance Enforcement Authority alleges that a Registered Entity has violated a Reliability Standard, the Compliance Enforcement Authority shall provide written notice of Alleged Violation and sanction (signed by an officer or designee) to the Registered Entity (CEO or equivalent and compliance contact) and NERC. The Compliance Enforcement Authority may also issue an initial notice of Alleged Violation, without specifying the proposed penalty or sanction, to the Registered Entity. The notice of Alleged Violation and sanction shall contain, at a minimum:

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the Compliance Enforcement Authority believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by the Compliance Enforcement Authority to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the Compliance Enforcement Authority will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:
 - 1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or
 - 2. agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or
 - 3. contest both the Alleged Violation and proposed penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that

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submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction;

- (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed penalty or sanction, the Registered Entity may elect to have a hearing conducted pursuant to either (i) the short-form procedure in Section 1.3.2, or (ii) the full hearing procedure, in **Attachment 2, Hearing Process**, and
- (viii) required procedures to submit the Registered Entity's Mitigation Plan.

NERC shall forward a copy of the notice of Alleged Violation to FERC and any other Applicable Governmental Authority within two (2) business days of receipt from the Compliance Enforcement Authority.

Upon acceptance of the Alleged Violation and proposed penalty or sanction, the notice of the penalty or sanction or other enforcement action will then be processed and issued to the Registered Entity.

5.2 Registered Entity Response

If the Registered Entity does not contest or does not respond to the notice of Alleged Violation within thirty (30) days, it shall be deemed to have accepted the Compliance Enforcement Authority's determination of violation and sanction (if applicable), in which case the Compliance Enforcement Authority shall issue to the Registered Entity and NERC a final report of Confirmed Violation. A Registered Entity may provide a written explanatory statement to accompany the final report.

If the Registered Entity contests the Alleged Violation or the proposed sanction, the Registered Entity shall submit to the Compliance Enforcement Authority a response explaining its position, signed by an officer, employee, attorney or other authorized representative together with any supporting information and documents. The Compliance Enforcement Authority shall schedule a conference with the Registered Entity within ten (10) business days after receipt of the response. If the Compliance Enforcement Authority and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. If no hearing request is made the violation will become a Confirmed Violation when filed by NERC with FERC or other Applicable Governmental Authority.

If a hearing is requested the Compliance Enforcement Authority shall initiate the hearing process by convening a hearing body and issuing a written notice of hearing to the Registered Entity and the hearing body and identifying the Compliance Enforcement Authority's designated hearing representative.¹⁰

¹⁰If the dispute involves a proposed Mitigation Plan, which has not been accepted by the Compliance Enforcement Authority, the Registered Entity may file a request for hearing with the Compliance Enforcement Authority.

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5.3 Hearing Process for Compliance Hearings

The Compliance Enforcement Authority hearing process is set forth in **Attachment 2**.

5.4 Settlement Process

Settlement negotiations may occur at any time, including prior to the issuance of a notice of Alleged Violation and sanction until a notice of penalty is filed with FERC or another Applicable Governmental Authority. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the Compliance Enforcement Authority shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf. All settlement agreements must conform to the requirements of NERC Rule of Procedure 403.19 and, if approved, must provide for waiver of the Registered Entity's right to further hearings and appeal.

The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement.

The Regional Entity shall report the terms of all settlements of compliance matters to NERC. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances. Based on this review, NERC will either approve the settlement or reject the settlement and notify the Regional Entity and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, the Regional Entity will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will (i) report the approved settlement of the violation to FERC or other Applicable Governmental Authority, and (ii) publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement. The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

5.5 NERC Appeal Process

The Registered Entity may appeal the hearing body's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410. The steps for the NERC appeals process are as shown in **Figure 5.5**:¹¹

On appeal, NERC shall either affirm the Regional Entity decision or remand to the Regional Entity with reasons for its decision. In addition, it may direct the Regional Entity to revise a decision that clearly conflicts with the goal of consistent national reliability enforcement or

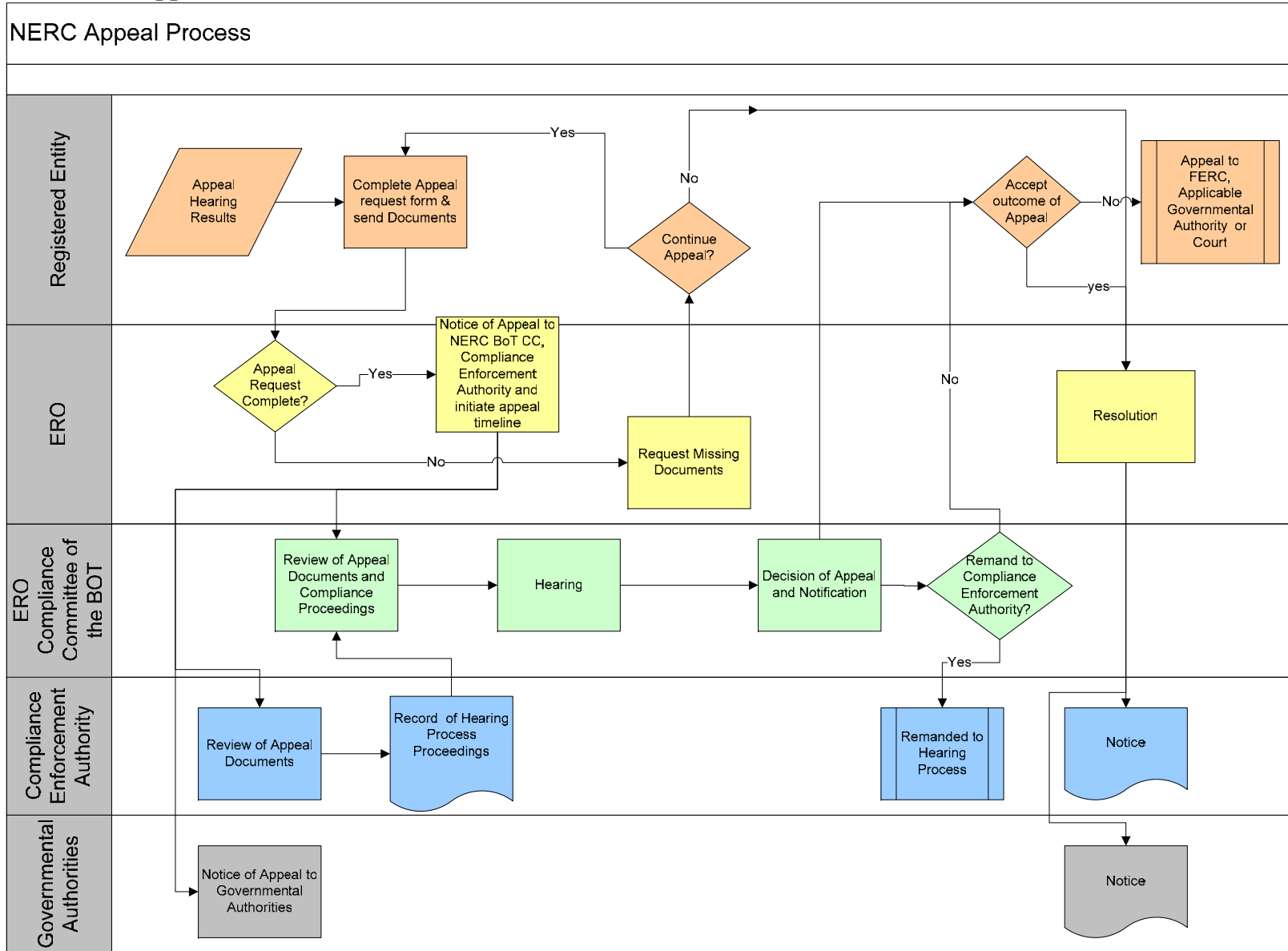
¹¹This process generally completes within ninety (90) days of NERC's receipt of request for appeal.

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where the requirement to revise the decision is necessary for NERC's oversight of Regional Entity compliance activities, in which case any participant may reopen the proceedings on any issue.

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Figure 5.5 – NERC Appeal Process



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5.6 Notice of Penalty

If the Registered Entity does not dispute the notice of Alleged Violation and the penalty and sanction or a decision has been entered finding a violation and all appeals have been concluded, NERC shall file a notice of penalty with FERC and any other Applicable Governmental Authority. NERC will include with the notice of penalty any statement provided by the Registered Entity as set forth in Section 8.0. NERC may direct the Regional Entity to revise a penalty determination that clearly conflicts with the goal of consistent national reliability enforcement, in which case any participant may reopen the proceedings on any issue, irrespective of whether the issue was previously litigated, settled or unopposed.

The penalty or sanction will be effective upon expiration of the thirty (30) day period following filing with FERC of the notice of penalty or, if FERC decides to review the penalty or sanction, upon final determination by FERC.

6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

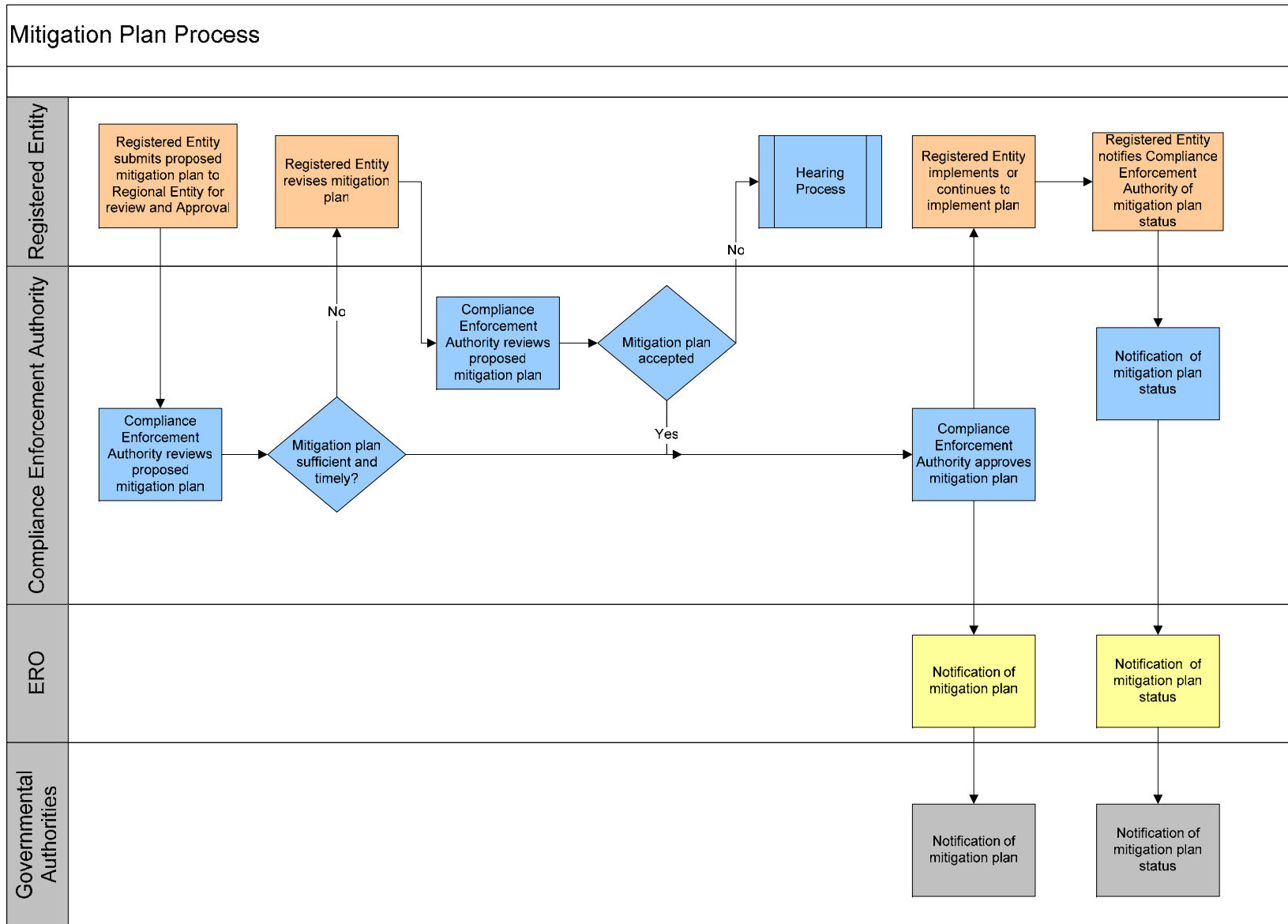
6.1 Requirement for Submission of Mitigation Plans

A Registered Entity found to be in violation of a Reliability Standard shall file with the Compliance Enforcement Authority (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation.

Figure 6.1 shows the process steps for Mitigation Plans.

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Figure 6.1 – Mitigation Plan Process



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6.2 Contents of Mitigation Plans

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to prevent recurrence of the Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the bulk power system reliability and an action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate

The Mitigation Plan shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity, which if applicable, shall be the person that signed the Self-Certification or Self Reporting submittals.

6.3 Timetable for Completion of Mitigation Plans

The Mitigation Plan shall be completed in time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay. The Compliance Enforcement Authority will expect full compliance with the Reliability Standard to which the Mitigation Plan is applicable at the next report or assessment of the Registered Entity. At the Compliance Enforcement Authority's discretion, the completion deadline may be extended for good cause including: (i) short

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assessment periods (i.e., event driven or monthly assessments), and (ii) construction requirements in the Mitigation Plan that extend beyond the next assessment period or other extenuating circumstances. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by the Compliance Enforcement Authority with associated sanctions or penalties. Regional Entities will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, the Compliance Enforcement Authority will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no penalties or sanctions will apply. Regional Entities will also notify NERC of any such waivers of violations of Reliability Standards.

A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the Compliance Enforcement Authority at least five (5) business days before the original milestone or completion date. The Compliance Enforcement Authority may accept a request for an extension or modification of a Mitigation Plan if the Compliance Enforcement Authority determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by the Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any penalties or sanctions imposed for such violations.

6.4 Submission of Mitigation Plans

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the notice of Alleged Violation and penalty or sanction, if the Registered Entity does not contest the violation and penalty or sanction. If the Registered Entity disputes the notice of Alleged Violation or penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the hearing body, unless the Registered Entity elects to appeal the hearing body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or penalty or sanction; such submission shall not be deemed an admission of a violation or the appropriateness of a penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the Compliance Enforcement Authority before the hearing body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

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6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans

Unless extended by the Compliance Enforcement Authority, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. If the Compliance Enforcement Authority rejects a Mitigation Plan, the Compliance Enforcement Authority will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The Compliance Enforcement Authority will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the Compliance Enforcement Authority will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Process, by submitting to the Compliance Enforcement Authority a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the Compliance Enforcement Authority will issue a written statement accepting a Mitigation Plan it deems as appropriate.

Regional Entities will notify NERC within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and will notify the Regional Entity, which will in turn notify the Registered Entity, as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the Regional Entity, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. NERC will submit to the Commission, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan.

6.6 Completion/Confirmation of Implementation of Mitigation Plans

The Registered Entity shall provide updates at least quarterly to the Compliance Enforcement Authority on the progress of the Mitigation Plan. The Compliance Enforcement Authority will track the Mitigation Plan to completion and may conduct on-site visits and review status during audits to monitor Mitigation Plan implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to the Compliance Enforcement Authority certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for the Compliance Enforcement Authority to verify completion. The Compliance Enforcement Authority shall request such data or information and conduct follow-up assessments, on-site or other Spot Checking, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard.

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any

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violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the Compliance Enforcement Authority. In addition, the Compliance Enforcement Authority may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

Regional Entities will provide to NERC the quarterly status reports and such other information as NERC requests, and will notify NERC when each Mitigation Plan is verified to have been completed.

6.7 Recordkeeping

The Compliance Enforcement Authority will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Reporting, Compliance Audit, Compliance Violation Investigation, Complaint, etc.
- Date of notification of violation and sanction.
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.

7.0 REMEDIAL ACTION DIRECTIVES

The Compliance Enforcement Authority may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the bulk power system from an imminent threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to an Alleged Violation of a Reliability Standard. The Compliance

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Enforcement Authority will specify if a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, the Regional Entity shall consult the Reliability Coordinator for the Registered Entity, if applicable, to ensure that the Remedial Action Directive is not in conflict with directives issued by the Reliability Coordinator.

Any Remedial Action Directive must be provided in a notice to the Registered Entity and shall include: (i) a list of the violations or possible violations of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) a deadline for compliance and (iv) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions. The Compliance Enforcement Authority will monitor implementation of Remedial Action Directives as necessary to verify compliance.

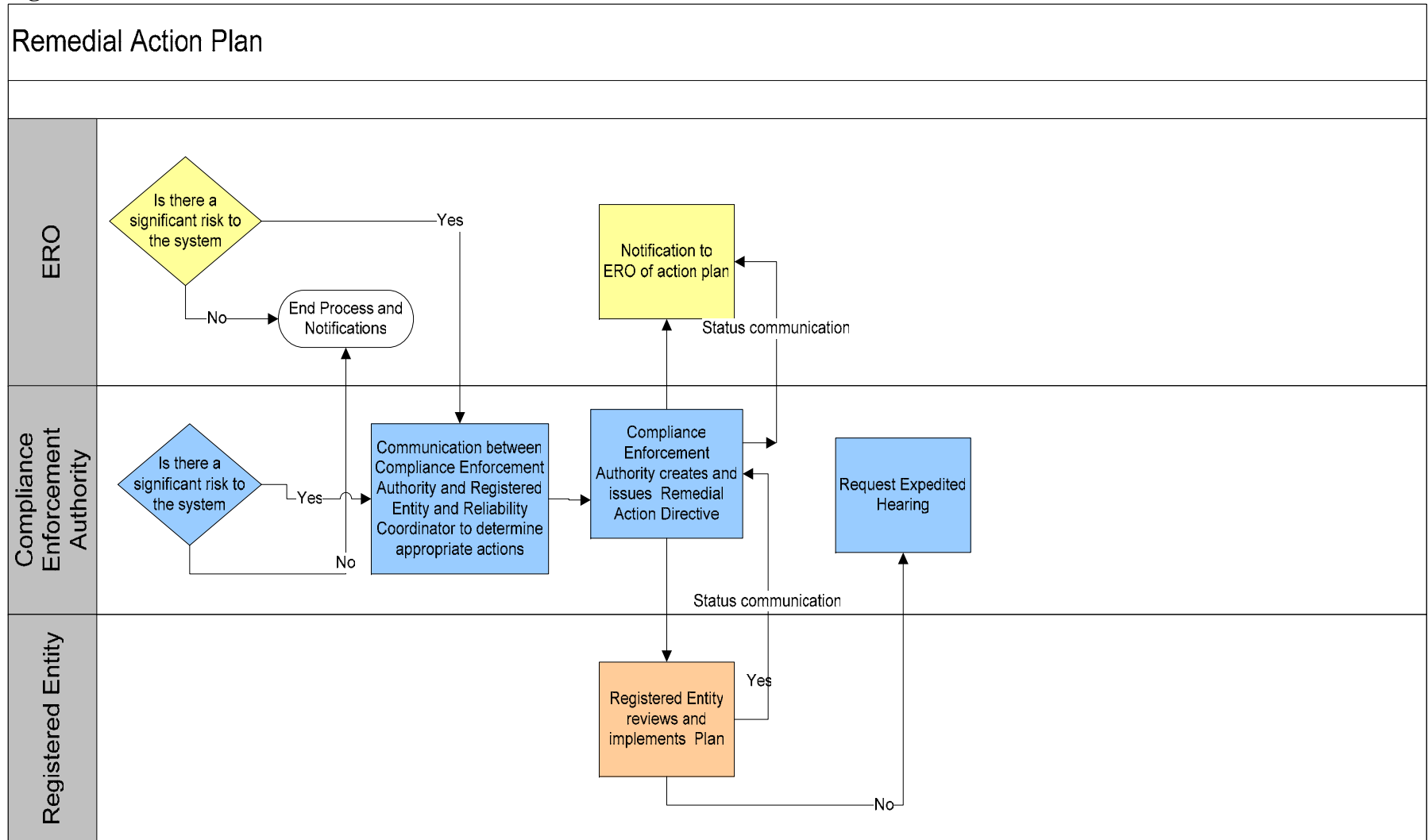
The Regional Entity will notify NERC within two (2) business days after issuing a Remedial Action Directive.

Once the Compliance Enforcement Authority has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to the Compliance Enforcement Authority within two (2) business days following receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section 1.9 of **Attachment 2, Hearing Process**. Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of **Attachment 2, Hearing Process** shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive until the hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

Figure 7.0 shows the process steps for a Remedial Action Directive.

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Figure 7.0 – Remedial Action Process



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8.0 REPORTING AND DISCLOSURE

Regional Entities shall prepare and submit to NERC all required reports (including those required by NERC Rules of Procedure, Sections 403.15, 403.17 and 403.19, containing current information concerning (1) Registered Entity compliance with Reliability Standards, (2) all Alleged and Confirmed Violations of Reliability Standards by Registered Entities, (3) the status of Alleged Violations, (4) sanctions and penalties, (5) Remedial Action Directives imposed, and (6) Mitigation Plan(s) accepted including dates for all required actions and for completion.

Regional Entities shall report to NERC, on a confidential basis, any allegations or evidence of violations of Reliability Standards regardless of significance, whether verified or still under investigation, that are received or obtained by the Regional Entity through any means within five (5) business days, unless the violation indicated or alleged has resulted in or has the potential to result in, a reduced level of reliability to the bulk power system (as provided in Section 408 of the NERC Rules of Procedure), in which cases the Regional Entity shall notify NERC within forty-eight (48) hours. NERC shall notify FERC and any other Applicable Governmental Authority within two (2) business days of receiving such a report from the Regional Entity. Such reports shall include information regarding the nature of the violation indicated or alleged and its potential impact on the reliability of the bulk power system, the name of the Registered Entity involved, the status and timetable of any compliance violation assessment, and the name of a Regional Entity staff person knowledgeable about the information to serve as a point of contact, as required by Section 408 of the NERC Rules of Procedure and 18 C.F.R. §39.7(b).

Regional Entities shall report to NERC at least quarterly the status of violations of Reliability Standards, regardless of significance, that have not yet resulted in a final determination of violation or have not completed the hearing process, or for which mitigation activities (including activities being carried out pursuant to a settlement) have not been completed. Regional Entities will ensure the information is current when these reports are provided.

Regional Entities shall report to NERC all Confirmed Violations of Reliability Standards by Registered Entities including all penalties, sanctions, Mitigation Plans and schedules, and settlements, within ten (10) business days of each determination. At the same time, Regional Entities will provide the report to the affected Registered Entity, accompanied by a notice that the Registered Entity may provide a statement to NERC to accompany the report when posted by NERC. The Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

NERC will publicly post each report of a Confirmed Violation, together with any statement submitted by the Registered Entity, no sooner than five (5) business days after the report is provided by the Regional Entity to NERC and the Registered Entity.

NERC will provide reports quarterly to FERC and any other Applicable Governmental Authorities on the status of all Alleged and Confirmed Violations for which mitigation activities have not been completed. NERC will publish public reports quarterly on its Web site of all Confirmed Violations of Reliability Standards during the quarter just completed, with the identity of the violator.

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9.0 DATA RETENTION AND CONFIDENTIALITY

9.1 Records Management

The Compliance Enforcement Authority records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the Reliability Standards data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

9.2 Retention Requirements

The Compliance Enforcement Authority records management policy will require that information and data generated or received pursuant to Compliance Program activities, including Compliance Audits, Self-Certifications, Spot Checking, Compliance Violation Investigations, Self-Reporting, Periodic Data Submittals, Exception Reporting, and Complaints, as well as a hearing process, will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC or another Applicable Governmental Authority. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

Upon request from NERC, Regional Entities will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity under the Compliance Program. In providing the information and data to NERC, the Regional Entity shall preserve any mark of confidentiality.

9.3 Confidentiality and Critical Energy Infrastructure Information

9.3.1 Definitions

Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “confidential information,” “confidential business and market information,” “critical energy infrastructure information,” and “critical infrastructure” shall have the meanings stated in Section 1501 of the NERC Rules of Procedure.

9.3.2 Protection of Confidential Information

The Compliance Enforcement Authority personnel (including any contractors, consultants and industry volunteers) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning confidential information.

9.3.3 Critical Energy Infrastructure Information

The Compliance Enforcement Authority will keep confidential all critical energy infrastructure information in accordance with Section 1500 of the NERC Rules of Procedures. Information
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deemed to be critical energy infrastructure information shall be redacted and shall not be released publicly.

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ATTACHMENT 1

PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

If data, information, or other reports (including Mitigation Plans) requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may sequentially execute the following steps for each Reliability Standard for which the Compliance Enforcement Authority has requested data, information, or other reports. The Compliance Enforcement Authority however will afford the Registered Entity reasonable opportunity to resolve a difficulty submitting data due to time or format issues.

Step 1: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's designated contact.

Step 2: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's vice president or equivalent responsible for compliance (with a copy to NERC and the Registered Entity's designated contact).

Step 3: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's chief executive officer or equivalent (with a copy to NERC, the Registered Entity's vice president or equivalent responsible for compliance and the Registered Entity's designated contact).

A full Compliance Audit may be scheduled at this step.

Step 4: Thirty (30) days after the Required Date, a Reliability Standard violation may be applied at the Severe Violation Severity Level.

Step 4 does not apply to Compliance Audits and Mitigation Plan tracking requests.

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ATTACHMENT 2 - HEARING PROCEDURES

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

The provisions set forth in this Paragraph 1.0 (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance Enforcement Authority in hearings in the United States conducted into (i) whether Registered Entities within the Compliance Enforcement Authority’s area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with 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 Hearing Procedures shall be conducted before a [HEARING BODY] established by the Compliance Enforcement Authority. The composition of the [HEARING BODY], after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, and decision by the [HEARING BODY] on any matter brought before it for decision.

1.1.2 Deviation

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

1.1.3 Standards for Discretion

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

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

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

1.1.4 Interpretation

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

1.1.5 Definitions

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

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

“Clerk,” as designated by the Compliance Enforcement Authority.

“Compliance Enforcement Authority’s area of responsibility” means the Compliance Enforcement Authority’s corporate region. If a Regional Entity is the Compliance Enforcement Authority, the Compliance Enforcement Authority’s area of responsibility is shown in Exhibit A to the delegation agreement between the Regional Entity and NERC.

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

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

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

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

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

“FERC” means the Federal Energy Regulatory Commission.

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

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

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

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

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

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

“Staff” or “Compliance Staff” means individuals employed or contracted by the Compliance Enforcement Authority who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans.

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies the Compliance Enforcement Authority’s conflict of interest

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policy and is selected to assist in a proceeding by providing technical advice to the Hearing Officer and/or the [HEARING BODY].

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

All filings made with [HEARING BODY] must contain:

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

1.2.2 Form of Filings

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

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1.2.3 Submission of Documents

a) Where to File

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

b) When to File

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

c) How to File

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

d) Number of Copies to File

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

e) Signature

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

f) Verification

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

g) Certificate of Service

Filings shall be accompanied by a certificate of service stating the name of the individuals served, the Participants whose interests the served individuals represent, the date on which

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service is made, the method of service and the addresses to which service is made. The certificate shall be executed by the individual who caused the service to be made.

1.2.4 Service

a) Service List

For each proceeding, the 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 [as registered with the Compliance Enforcement Authority] shall automatically be included on the service list. Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the Clerk.

b) By Participants

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

c) By the Clerk

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

d) Effective Date of Service

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

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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 the Compliance Enforcement Authority 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 the Compliance Enforcement Authority 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 the Compliance Enforcement Authority is closed when the period is less than fifteen (15) days.

1.2.6 Extensions of Time

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

1.2.7 Amendments

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

1.2.8 Transcripts

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

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

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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, or stated on the record for recordation in the transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the [HEARING BODY]. All notices of hearings shall set forth the date, time and place of hearing.

1.2.10 Location of Hearings and Conferences

All hearings and oral arguments shall be held at the principal office of the Compliance Enforcement Authority unless the Hearing Officer or [HEARING BODY] designates a different location.

1.2.11 Participant Participation

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

1.2.12 Interventions Are Not Permitted

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

1.2.13 Proceedings Closed to the Public

No hearing, oral argument or meeting of the [HEARING BODY] shall be open to the public, and no notice, ruling, order or any other issuance of the Hearing Officer or [HEARING BODY], or 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 Participants, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding.

1.2.14 Docketing System

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a notice of Alleged Violation. Unless NERC provides a different docketing system that will be used uniformly by the Compliance Enforcement Authorities, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash (“-”), followed by the letters “[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.

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1.2.15 Hold Harmless

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

1.3 Initiation of the Hearing Process

1.3.1 Registered Entity’s Option to Request a Hearing

Except when contesting a Remedial Action Directive pursuant to section 1.9 of these Hearing Procedures, a Registered Entity may file a statement with the Compliance Enforcement Authority requesting a hearing if either:

- a) The Registered Entity files a response to a notice of Alleged Violation that contests either the alleged violation, the proposed Penalty, or both; or
- b) The Compliance Staff submits to the Registered Entity a statement identifying a disagreement with a Registered Entity’s proposed Mitigation Plan.

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

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its disagreement with a Registered Entity’s proposed Mitigation Plan shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff’s position on the proposed Mitigation Plan, using 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 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

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either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

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

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

1.3.2 Shortened Hearing Procedure

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

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

- a) The Prehearing Conference shall be held within seven (7) days after the date on which the notice of hearing is issued. In addition to any other matters set forth in Paragraph 1.5.2 that may apply, the prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).
- b) Within seven (7) days after the date on which the notice of hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to Paragraph 1.5.7.
- c) Within twenty-one (21) days after the prehearing conference, the Staff shall file:
 - 1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
 - 2) all documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - 3) a verification attesting to the truthfulness of the facts alleged in the filing.

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- 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 have not already been submitted in the proceeding; and
 - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- e) Within seven (7) 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 after the Staff's reply comments filing or any additional filing by the Registered Entity pursuant to Subparagraph (e).
- g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days after the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "brief on exceptions" in accordance with Paragraph 1.7.5 and within seven (7) days thereafter, a reply brief designated "Brief in Reply to Exceptions."
- h) The [HEARING BODY] shall strive, but is not required, to issue a final order within ninety (90) days of the notice of hearing.

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

1.4 General Hearing Procedure

1.4.1 Notice of Hearing

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

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the shortened hearing procedures (Paragraph 1.3.2) or the full hearing procedures (Paragraphs 1.4 to 1.7).

1.4.2 Hearing Officer

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

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

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

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

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

1.4.3 [HEARING BODY]

The [HEARING BODY] is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:

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

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1.4.4 Interlocutory Review

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

On review of a Hearing Officer's ruling, the [HEARING BODY] may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Paragraph 1.7.8) of the [HEARING BODY], and (ii) majority vote of the members of the [HEARING BODY] voting on the final order (which number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the [HEARING BODY'S] action taken on interlocutory review shall not be allowed. Filing and disposition of a petition for interlocutory review of a ruling of the Hearing Officer shall not suspend or otherwise delay a hearing or any other scheduled dates in the proceeding except as authorized by the Hearing Officer or the [HEARING BODY] based on a finding of exceptional circumstances.

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 the Compliance Enforcement Authority's applicable conflict of interest policy.

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

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

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If a quorum (as defined in Paragraph 1.7.8) of the [HEARING BODY] does not remain after any recusals and rulings on motions for disqualification, then the Compliance Enforcement Authority 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 Compliance Enforcement Authority shall only appoint the number of new members as are necessary to create a quorum. Any new member of the [HEARING BODY] shall be subject to the provisions applicable herein to all [HEARING BODY] members.

1.4.6 Technical Advisor

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

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

1.4.7 No Ex Parte Communications

- a) Once a Registered Entity requests a hearing pursuant to Paragraph 1.3:
 - 1) neither the [HEARING BODY], the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that
 - 2) the [HEARING BODY], the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
 - A) in writing if the writing is simultaneously provided to all Participants; or
 - B) orally if a representative for every Participant is present in person or by telephone;
 - C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- b) The proscription in Subparagraph (a)(1) does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof on any topic, provided that any member of the Compliance Staff

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involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.

- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the [HEARING BODY], the Hearing Officer and any Technical Advisor.
- d) Any member of the [HEARING BODY], the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, and a summary of the substance and nature of the communication and all responses thereto, and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

1.4.8 Appearances

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

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

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

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

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

1.4.9 Failure to Appear or Exercise Diligence

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

1.4.10 Consolidation of Proceedings

In the event that more than one Registered Entity receives a Notice of Alleged Violation for the same event or transaction, and each Registered Entity selects the full hearing procedure described in Sections 1.4 to 1.7, the Hearing Body on its own motion may exercise its discretion to examine the actions of both Registered Entities in a single proceeding as long as an initial

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opinion has not been rendered by the Hearing Officer pursuant to Section 1.7.4 in any proceeding to be consolidated.

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

1.5 Prehearing Procedure

1.5.1 Waiver of Time Limits

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

1.5.2 Prehearing Conference

The purpose of the prehearing conference shall be to:

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

1.5.3 Summary Disposition

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

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Officer granting summary disposition shall be confirmed, rejected or modified in a final order issued by the [HEARING BODY].

1.5.4 Status Hearings

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

1.5.5 Motions

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

1.5.6 Experts

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

1.5.7 Inspection and Copying of Documents in Possession of Staff

(a) Documents to be Available for Inspection and Copying

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

(A) requests for information to the Respondent;

(B) every written request, including e-mail, directed to persons not employed by the Compliance Enforcement Authority to provide information or documents or to be interviewed;

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

(D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;

(E) all other documents obtained from the Respondent; and

(F) all other documents obtained from persons not employed by the Compliance Enforcement Authority.

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

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

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

(b) Documents That May Be Withheld by Staff

(1) Staff may withhold a document from inspection and copying by the Respondent if:

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

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

(C) the document would disclose (i) an examination, investigatory or enforcement technique or guideline of the Compliance Enforcement Authority, 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

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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 Compliance Enforcement Authority, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

(D) the Hearing Officer grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

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

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

(c) Withheld Document List

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

(d) Timing of Inspection and Copying

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

(e) Place and Time of Inspection and Copying

Documents subject to inspection and copying pursuant to this Paragraph shall be made available to the Respondent for inspection and copying at the Compliance Enforcement Authority office where the documents are ordinarily maintained, or at such other office as the Hearing Officer, in his or her discretion, shall designate, or as the Participants otherwise agree. A Respondent shall be given access to the documents at the Compliance Enforcement Authority'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 Compliance Enforcement Authority's offices.

(f) Copying Costs

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

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(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 harmless error.

1.5.8 Other Discovery Procedures

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

1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

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

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

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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 responding to the preceding round of evidence, except that the Registered Entity's direct case may exceed the scope of Staff's direct case if necessary for the Registered Entity to set forth its direct case fully.

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

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

1.5.10 Protective Orders

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

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

1.5.11 Pre-Evidentiary Hearing Memorandum

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

1.6 Evidentiary Hearing Procedure

1.6.1 Evidentiary Hearings

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

1.6.2 Burden of Proof and Order of Receiving Evidence

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

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1.6.3 Opening and Closing Statements

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

1.6.4 Right of Participant to Present Evidence

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

1.6.5 Exhibits

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

1.6.6 Witness Attendance at Evidentiary Hearing

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

1.6.7 Admission of Evidence

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

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

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corrections to written testimony and exhibits shall file corrected copies with the Clerk and provide corrected copies to the Hearing Officer and other Participant.

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

Except in exceptional cases and upon a showing of good cause, no witness shall be allowed to testify during the evidentiary hearing unless a Participant has served the witness' written testimony in advance of the evidentiary hearing in accordance with the schedule established by the Hearing Officer. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the Compliance Enforcement Authority's policy to discourage witness testimony at an evidentiary hearing when a Participant has not served the witness' written testimony in advance of the evidentiary hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

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

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

1.6.9 Stipulations

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

1.6.10 Official Notice

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

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- 1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of other Compliance Enforcement Authorities.
- 2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of the Compliance Enforcement Authority.
- 3) State, provincial and federal statutes and municipal and local ordinances.
- 4) The decisions of state, provincial and federal courts.
- 5) Generally recognized scientific or technical facts within the specialized knowledge of the Compliance Enforcement Authority.
- 6) All other matters of which the courts of the United States may take judicial notice.

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

1.6.11 Admissibility of Evidence

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

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

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

1.6.12 Offer of Proof

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

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1.6.13 Reservation of Evidentiary Ruling

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

1.6.14 Cross-Examination

Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the [HEARING BODY] may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the [HEARING BODY] seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

1.6.15 Redirect Examination

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

1.6.16 Examination of Adverse Participant

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

1.6.17 Close of the Evidentiary Record

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

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1.7 Post- Evidentiary Hearing Procedure

1.7.1 Briefs

- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.
- b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.
- c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, the number and complexity of the issues, and the objective of expedition.
- d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- f) The Hearing Officer may, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.
- g) The Hearing Officer may establish reasonable page limitations applicable to briefs.

1.7.2 Other Pleadings

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

1.7.3 Draft Initial Opinions

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

1.7.4 Hearing Officer's Initial Opinion

Except as otherwise ordered by the [HEARING 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, Mitigation Plan or Remedial Action Directive 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, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to Paragraph 1.5.10.

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1.7.5 Exceptions

- a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "brief on exceptions" and, within fourteen (14) days after the time for filing briefs on exceptions or such other time as is set by the Hearing Officer, any Participant may file as a reply, a "brief in reply to exceptions."
- b) Exceptions and replies thereto with respect to statements, findings of fact or conclusion in the initial opinion must be specific and must be stated and numbered separately in the brief. With regard to each, the Participant must specify each error asserted, and include a concise discussion of any policy considerations applicable and any other arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed (1) together in one brief; or (2) in two separate documents, one designated as the brief containing arguments, and the other designed "Exceptions," containing the suggested replacement language.
- c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
- d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.
- e) Statements of fact should be supported by citation to the record.
- f) The Hearing Officer may establish reasonable page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such page limitations shall not apply to a Participant's proposed replacement language.
- g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

1.7.6 Oral Argument

The [HEARING BODY] may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues. If oral argument is held where briefs have been filed, argument may be limited to issues identified by the [HEARING 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

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

1.7.7 Additional Hearings

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

1.7.8 [HEARING BODY] Final Order

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

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;

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- 2) Registered Entity's proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- 3) Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
- 4) Registered Entity's request for a hearing;
- 5) Participant filings, motions, and responses;
- 6) Notices, rulings, orders and other issuances of the Hearing Officer and [HEARING BODY];
- 7) Transcripts;
- 8) Evidence received;
- 9) Written comments submitted in lieu of written testimony;
- 10) Matters officially noticed;
- 11) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- 12) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- 13) Post-hearing pleadings other than briefs;
- 14) The Hearing Officer's initial opinion;
- 15) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 16) The [HEARING BODY]'s final order, any notice of Penalty issued therewith, and the Clerk's notice transmitting the final order to the Participants;
- 17) All notices of ex parte communications; and
- 18) Any notifications of recusal and motions for disqualification of a member of the [HEARING 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 to NERC the record of any docket that is the subject of an appealed final order.

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1.8 Settlement

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

1.9 Remedial Action Directives

1.9.1 Initiation of Remedial Action Directive Hearing

Staff] may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. 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 by filing a written notice with the Clerk of the 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) days following issuance of the Remedial Action Directive. If the Registered Entity does not give written notice to 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 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 1.4.1.

1.9.2 Remedial Action Directive Hearing Procedure

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

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

- a) The Hearing Officer or the [HEARING 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.

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- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.
- e) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the [HEARING BODY]. 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.

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.

**North American Electric Reliability Corporation
Compliance Monitoring and Enforcement Program**

~~**November 15, 2006**~~

October 16, 2007

APPENDIX 4C TO THE RULES OF PROCEDURE

Compliance Monitoring and Enforcement Program

Compliance Monitoring and Enforcement Program

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ATTACHMENT 1 – PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

ATTACHMENT 2 – COMPLIANCE ENFORCEMENT AUTHORITY HEARING PROCESS

COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Regional Entities to monitor, assess, and enforce compliance with Reliability Standards within the United States. This is accomplished through compliance monitoring and rigorous proactive Compliance Audits. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

1.1 Definitions

- 1.1.1 Alleged Violation: A potential violation for which the Compliance Enforcement Authority has completed its accuracy and completeness review and has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2 Annual Audit Plan: A plan developed annually by the Compliance Enforcement Authority that includes the Reliability Standards and Registered Entities to be audited, the schedule of Compliance Audits, and Compliance Audit Participant requirements for the calendar year.
- 1.1.3 Applicable Governmental Authority: ~~A governmental body other than the U.S.~~The Federal Energy Regulatory Commission (“FERC”) with authority to enforce Reliability Standards against a Registered Entity within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4 Complaint: An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.5 Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the requirements of applicable Reliability Standards.
- 1.1.6 Compliance Audit Participants: Registered Entities scheduled to be audited and the audit team members.
- 1.1.7 Compliance Enforcement Authority: NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.8 Compliance Violation Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.

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- 1.1.9** Confirmed Violation: An Alleged Violation for which an entity has: 1) accepted the finding of the violation by a ~~regional entity~~[Regional Entity](#) or NERC and will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.
- ~~**1.1.10** Contested Violation: An Alleged Violation for which the Registered Entity disputes the violation and/or the penalty and sanction determination.~~
- 1.1.10** ~~1.1.11~~ Exception Reporting: Information provided to the Compliance Enforcement Authority by a Registered Entity indicating that ~~exceptions to~~[a violation of](#) a Reliability Standard ~~baseline norm have~~[has](#) occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.11** ~~1.1.12~~ Mitigation Plan: An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is required ~~whenever~~[when](#) a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority decision, Settlement Agreement, or otherwise.
- 1.1.12** ~~1.1.13~~ NERC Compliance Registry: A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.13** ~~1.1.14~~ NERC Compliance Monitoring and Enforcement Program Implementation Plan ~~or NERC Implementation Plan~~: The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the Compliance Enforcement Authority in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.14** ~~1.1.15~~ Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the Compliance Enforcement Authority on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.15** ~~1.1.16~~ Regional Compliance Registry: A list, pursuant to Section 500 of the NERC Rules of Procedure ~~and the NERC Statement of Compliance Registry Criteria~~ of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of

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compliance within a Regional Entity's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.

1.1.16 ~~1.1.17~~ Regional Implementation Plan: An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the Regional Entity, (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the Regional Entity's Annual Audit Plan.

1.1.17 ~~1.1.18~~ Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and Regional Compliance Registry.

1.1.18 ~~1.1.19~~ Remedial Action Directive: An action (other than a penalty or sanction) required by a Compliance Enforcement Authority that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.

1.1.19 ~~1.1.20~~ Required Date: The date given a Registered Entity in a notice from the Compliance Enforcement Authority by which some action by the Registered Entity is required. Such date shall provide the Registered Entity a reasonable period of time in which to take the required action, given the circumstances and the action required.

1.1.20 ~~1.1.21~~ Self-Certification: Attestation by a Registered Entity of compliance or non-compliance with Reliability Standards for which Self-Certification is required by the Compliance Enforcement Authority and that are included for monitoring in the Regional Implementation Plan.

1.1.21 ~~1.1.22~~ Self-Reporting: A report by a Registered Entity of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or ~~that are being~~ will be taken to resolve the violation.

~~1.1.23~~ 1.1.22 Spot Checking: A process in which the Compliance Enforcement Authority requests a Registered Entity to provide information to support

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the Registered Entity's Self-Certification, Self-~~Report-Reporting~~, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards. ~~A-Spot~~ ~~Check~~Checking may also be random or initiated in response to events, as described in the Reliability Standards, or by operating problems or system events. ~~A~~ Spot ~~Check~~Checking may require an on-site review to complete.

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2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS

The Compliance Enforcement Authority shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure. The Compliance Enforcement Authority shall identify the owners, operators, and users of the bulk power system that meet the definition of Registered Entities within the Compliance Enforcement Authority's area of responsibility. Each Registered Entity shall inform the Compliance Enforcement Authority promptly of changes to its ~~Registration~~registration information. The Compliance Enforcement Authority shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity. The Compliance Enforcement Authority shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

The Compliance Enforcement Authority will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance matters. The Compliance Enforcement Authority will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

Each Regional Entity shall develop, maintain, and provide to NERC a Regional Compliance Registry with updates ~~whenever~~as changes occur to the registry. NERC shall maintain the NERC Compliance Registry on its ~~Web~~web site. NERC will provide FERC and Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES

The Compliance Enforcement Authority will monitor, assess, and enforce compliance with Reliability Standards using eight (8) monitoring processes to collect information in order to make assessments of compliance: (1) Compliance Audits, (2) Self-Certifications, (3) Spot Checking, (4) Compliance Violation Investigations, (5) Self-Reporting, (6) Periodic Data Submittals, (7) Exception Reporting, and (8) Complaints. These processes are described in Sections 3.1 through 3.8 below.

Enforcement actions taken by the Compliance Enforcement Authority through the Compliance Program may include the imposition of remedial actions, sanctions, and penalties, where applicable, which shall be based on the schedule of penalties and sanctions approved for implementation by FERC and other Applicable Governmental Authorities. The imposition and acceptance of sanctions and penalties shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards. Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

~~Prior to any enforcement action or hearing, the Compliance Enforcement Authority may request a fact and circumstances review of an alleged violation.~~

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Prior to reporting an Alleged Violations of Reliability Standards to NERC under Section 8.0, the Compliance Enforcement Authority may review the report of violation submitted to it by the Registered Entity, audit team, or others for accuracy and completeness. This may include a review of the applicability of the Reliability Standard(s) upon the Registered Entity, a review of the Registered Entity's actions or conduct in light of the particular Reliability Standard or requirement reported to have been violated, and a review of the functions performed by the Registered Entity and the function reported to have violated the Reliability Standard or requirement. Any corrections to the report of violation are to be made by the Compliance Enforcement Authority, and the Alleged Violation is to be reported to NERC if the Compliance Enforcement Authority has confirmed that the report contains evidence indicating the Registered Entity may have violated a Reliability Standard.

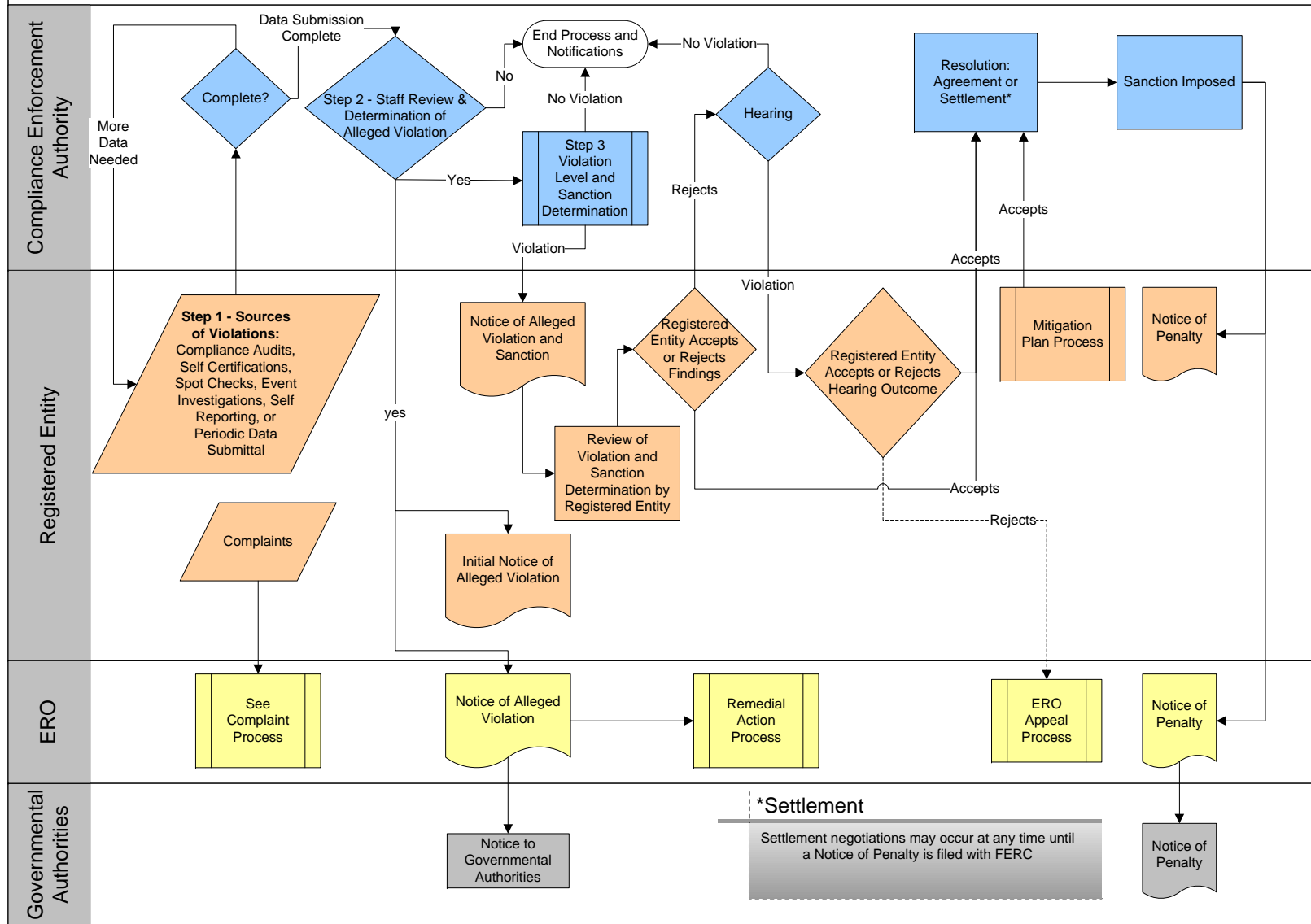
The Compliance Program requires timely data from Registered Entities to effectively monitor compliance with Reliability Standards. If data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

Any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. Electronic signatures are permitted in accordance with processes established by NERC and the Regional Entity. NERC or the Compliance Enforcement Authority may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

Figure 3.0 NERC Compliance Program Process depicts the overall process steps for the Compliance Program and each of the subsequent process diagrams are either inputs to the overall process or represent an expansion of a single process (e.g., hearing process) shown on this diagram.

NERC Compliance Monitoring and Enforcement Program Overview



3.1 Compliance Audits

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the ~~audit~~[Compliance Audit](#), consistent with accepted auditing guidelines as approved by NERC. [The audit guides will be posted on NERC's website.](#)

3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows and as shown on **Figure 3.1**:¹

- The Compliance Enforcement Authority distributes the Annual Audit Plan (developed in coordination with NERC) to the Compliance Audit Participants and NERC. The Compliance Enforcement Authority provides additional information to the Compliance Audit Participants, including audit materials, coordinating agendas and changes to the audit schedule as required. Prior to the ~~audit~~[Compliance Audit](#), the Compliance Enforcement Authority informs the Registered Entity of the Reliability Standards to be evaluated. NERC or the Regional Entity provides the audit schedules to FERC ~~or the~~[and to any other](#) Applicable Governmental Authority based upon the agreements in place with the ~~other~~ Applicable Governmental Authority.
- At least two (2) months prior to commencement of a regularly scheduled ~~audit~~[Compliance Audit](#), the Compliance Enforcement Authority notifies the Registered Entity of the ~~audit~~[Compliance Audit](#), identifies the audit team members and their recent employment history, and requests data, including a completed NERC pre-audit questionnaire. If the audit team members change from the time of the original notification, the Compliance Enforcement Authority will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the member (see [Section 3.1.5](#)).
- The Registered Entity provides to the Compliance Enforcement Authority the required information in the format specified in the request.
- The audit team reviews the submitted information for conformance with the requirements of the Reliability Standards prior to performing the ~~audit~~[Compliance Audit](#). The audit team follows NERC audit guidelines in the implementation of the ~~audit~~[Compliance Audit](#). This shall include conducting an exit briefing with the Registered Entity, providing for a review of the audit report with the Registered Entity before it is finalized, and issuing an audit report, including an assessment of compliance with the Reliability Standards, to the Compliance Enforcement Authority.

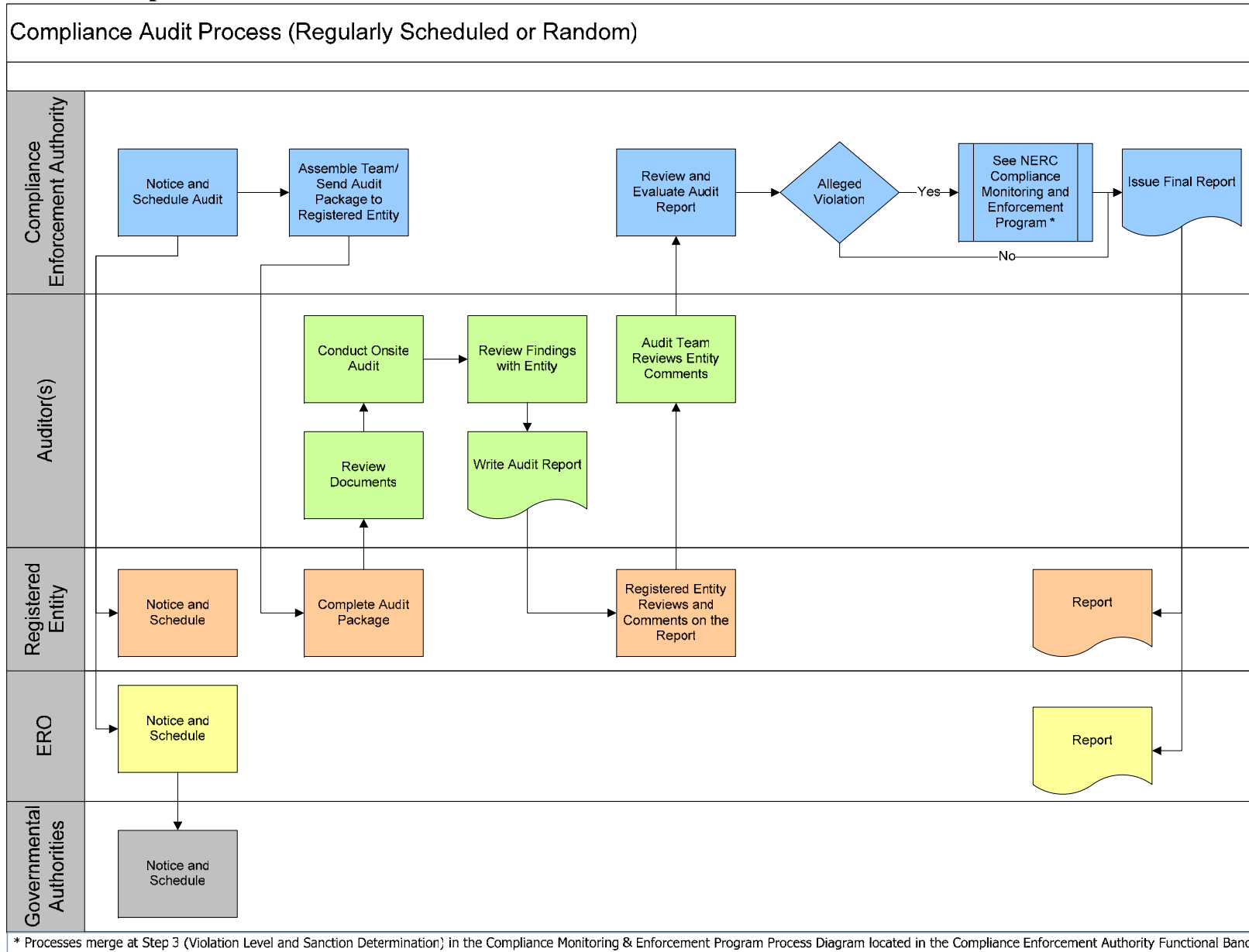
¹This process normally completes within sixty (60) days of the completion of the ~~compliance audit~~[on-site Compliance Audit work at the Registered Entity's site.](#)

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- The Compliance Enforcement Authority reviews the report developed by the audit team and completes an assessment of any Alleged Violations with the Reliability Standards identified in the report.
- The Compliance Enforcement Authority provides the final audit report to the Registered Entity and to NERC.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation [of a Reliability Standard](#) has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

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Figure 3.1 – Compliance Audit Process



3.1.2 Compliance Enforcement Authority Annual Audit Plan and Schedule

The Compliance Enforcement Authority shall develop an Annual Audit Plan. The Annual Audit Plan of Regional Entities will be included in the Regional Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or the Regional Entity provides the Annual Audit Plans to FERC ~~or the~~ and to any other Applicable Governmental Authority consistent with the agreements in place with the Applicable Governmental Authority.

Prior to January 1 of the year covered by the Annual Audit Plan, the Compliance Enforcement Authority shall notify Registered Entities subject to Compliance Audits during the upcoming year, of the audit schedules, methods, and data requirements for the audit. The Compliance Enforcement Authority will give due consideration to any schedule changes requested by Registered Entities to avoid unnecessary burdens.

Revisions and additions to a Regional Entity Annual Audit Plan shall be approved by NERC and the Registered Entity shall be notified in a timely manner (normally 60 days in advance) of changes or revisions to scheduled audit dates.

3.1.3 Frequency of Compliance Audits

The Compliance Enforcement Authority will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure based on criteria established by NERC. Additionally, an unscheduled Compliance Audit of any Registered Entity (i) may be initiated at any time by the Compliance Enforcement Authority if reasonably determined to be necessary to ensure the Registered Entities' compliance with Reliability Standards, and (ii) shall be initiated by the Compliance Enforcement Authority or by NERC if directed by FERC. The Compliance Enforcement Authority shall notify NERC and FERC that an unscheduled Compliance Audit is being initiated. The Registered Entity shall receive at least ten (10) business days advance notice that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team. The Registered Entity shall make any objections to the composition of the Compliance Audit team, which shall be based on failure to meet the criteria specified in Section 3.1.5, at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit.

3.1.4 Scope of Compliance Audits

A Compliance Audit will include all Reliability Standards applicable to the Registered Entity monitored in the NERC Implementation Plans in the current and three previous years, and may include other Reliability Standards applicable to the Registered Entity. If a Reliability Standard does not require retention of data for the full period of the ~~audit~~ Compliance Audit, the ~~audit~~ Compliance Audit will be applicable to the data retention period specified in the Reliability Standard.

3.1.5 Conduct of Compliance Audits

The audit team shall be comprised of staff personnel from the Compliance Enforcement Authority and may include contractors and industry volunteers as determined by the Compliance Enforcement Authority to be appropriate to comprise a sufficient audit team. The audit team

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leader shall be a staff member from the Compliance Enforcement Authority and is responsible for the conduct of the ~~audit~~[Compliance Audit](#) and preparation of the audit report. At their discretion, NERC Compliance Staff may participate on any Regional Entity ~~compliance~~ ~~audit~~[Compliance Audit](#) team either as an observer or as an audit team member as determined by the Regional Entity. Additionally, FERC and other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any ~~audit~~[Compliance Audit](#) of a Registered Entity.

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Each audit team member must:

- Be free of conflicts of interests. For example, employees or contractors of the Registered Entity being audited shall not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the Compliance Enforcement Authority is applicable.
- Successfully complete all NERC or NERC-approved Regional Entity auditor training applicable to the ~~compliance-audit~~[Compliance Audit](#). As a transitional matter, for ~~audits~~[Compliance Audits](#) conducted prior to January 1, 2008, at least a majority of audit team members must have successfully completed such training.

Prior to the ~~audit~~[Compliance Audit](#), copies of executed confidentiality agreements or acknowledgements will be provided to the Registered Entity.

A Registered Entity subject to ~~an-audit~~[a Compliance Audit](#) may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the Compliance Enforcement Authority no later than fifteen (15) days prior to the start of on-site audit work. [This fifteen \(15\) day requirement shall not apply \(i\) where an audit team member has been appointed less than twenty \(20\) days prior to the start of on-site audit work, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority within five \(5\) business days after receiving notice of the appointment of the Compliance Audit team member; and \(ii\) in the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority at least five \(5\) business days prior to the start of start of on-site audit work for the unscheduled Compliance Audit.](#) The Compliance Enforcement Authority will make a final determination on whether the member will participate in the ~~audit~~[Compliance Audit](#) of the Registered Entity. Nothing in this paragraph shall be read to limit the participation of NERC or FERC staff in the ~~audit~~[Compliance Audit](#).

3.1.6 Compliance Audit Reports

The audit team shall develop a draft audit report that shall include a description of the objective, scope, and methodology of the ~~audit~~[Compliance Audit](#); identify any Alleged Violations of Reliability Standards; identify any ~~mitigation~~[Mitigation Plans](#) or Remedial Action Directives, which have been completed or pending in the year of the ~~audit~~[Compliance Audit](#); and identify the nature of any confidential information redacted. A separate document may be prepared that contains recommendations of the audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

The audit team will consider corrections based on comments of the Registered Entity and provide the final audit report to the Compliance Enforcement Authority who will review the report and assess compliance with the Reliability Standards and provide the Registered Entity with a copy of the final report. Regional Entities will provide the final report to NERC, which ~~November 15, 2006–October 16, 2007~~ 13

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will in turn provide the report to FERC ~~or the~~ and to any other Applicable Governmental Authority. The Registered Entity shall receive the final audit report at least five (5) business days prior to the release of the report to the public. Work papers and other documentation associated with the audit shall be maintained by the Compliance Enforcement Authority in accordance with NERC requirements.

In the event the audit report identifies Alleged Violations, the final audit report, or pertinent part thereof identifying the Alleged Violation(s) and any proposed penalty or sanction(s), shall not be released to the public ~~until after~~ by NERC or the Compliance Enforcement Authority until (i) NERC submits a notice of penalty to FERC, or (ii) such Alleged ~~Violations have been addressed and finally determined by~~ Violation(s) have been admitted by the Registered Entity or resolved by a settlement with the Compliance Enforcement Authority pursuant to the provisions of Section 5.0.

Information deemed by a Compliance Enforcement Authority or the Registered Entity as critical energy infrastructure information or confidential information (as defined in Section 1501 of the NERC Rules of Procedure) shall be redacted from any public reports.

3.2 Self-Certification

The Compliance Enforcement Authority may require Registered Entities to self-certify their compliance with Reliability Standards.

If a Self-Certification accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check; will not subject the Registered Entity to an escalated penalty as a result of the ~~compliance audit~~ Compliance Audit process unless the severity of the violation is found to be greater than reported by the Registered Entity in the Self-Certification.

3.2.1 Self-Certification Process Steps

The process steps for the Self- Certification process are as follows and as shown in **Figure 3.2.1**.²

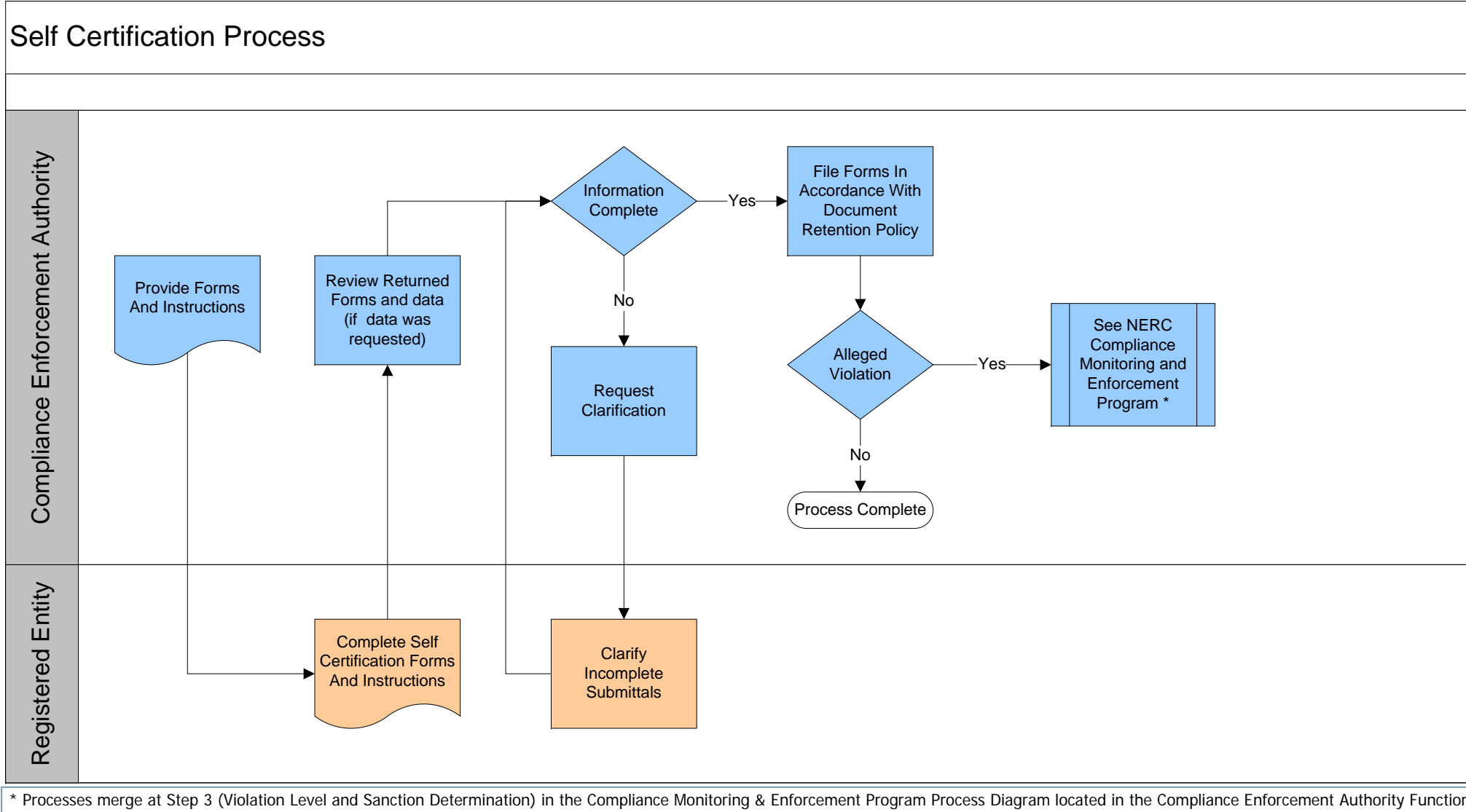
- The Compliance Enforcement Authority posts and updates the reporting schedule and informs Registered Entities. The Compliance Enforcement Authority ensures that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available electronically.
- The Compliance Enforcement Authority requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).
- The Registered Entity provides the required information to the Compliance Enforcement Authority.

²If no non-compliances are found, this process normally completes within sixty (60) days of the Compliance Enforcement Authority's receipt of data.

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- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards and may request additional data and/or information if necessary.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard (and with the Registered Entity's Mitigation Plan, if applicable). If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation [of a Reliability Standard](#) has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

Figure 3.2.1 – Self Certification Process



3.3 Spot Checking

Spot Checking will be conducted by the Compliance Enforcement Authority. Spot Checking may be initiated by the Compliance Enforcement Authority at any time to verify or confirm Self-Certifications, Self Reporting, and Periodic Data Submittals. Spot Checking may also be random or may be initiated in response to events, as described in the Reliability Standards, or by operating problems, or system events. The Compliance Enforcement Authority then reviews the information submitted to verify the Registered Entity's compliance with the Reliability Standard. Compliance auditors may be assigned by the Compliance Enforcement Authority as necessary.

3.3.1 Spot Checking Process Steps

The process steps for Spot Checking are as follows and as shown in **Figure 3.3.1**:³

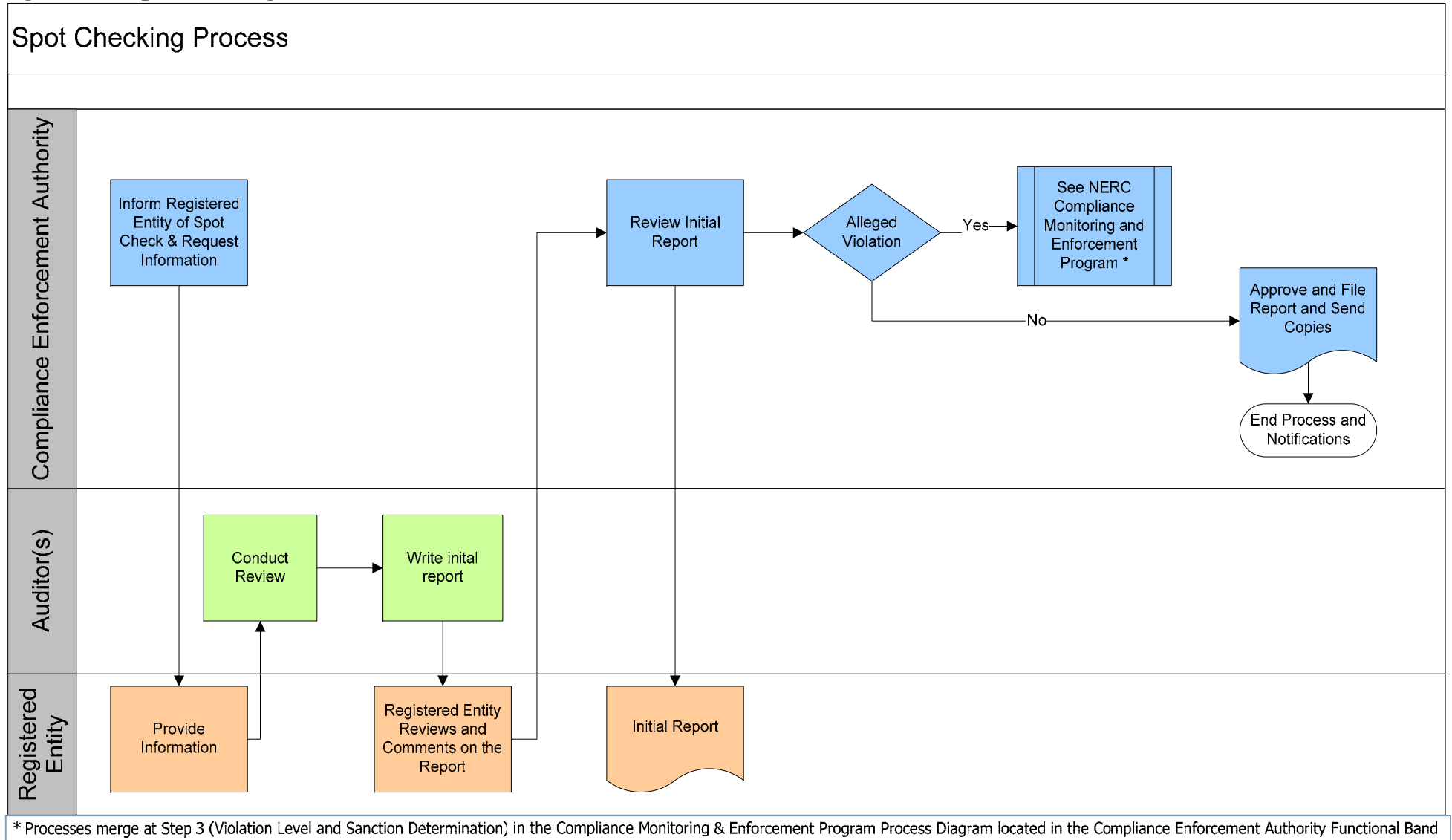
- The Compliance Enforcement Authority notifies the Registered Entity that Spot Checking will be performed and the reason for the spot check within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, any information submittal request made by the Compliance Enforcement Authority will allow at least twenty (20) days for the information to be submitted or available for review.
- The spot check may require submission of data, documentation, or possibly an on-site review.
- The Registered Entity provides required information to the Compliance Enforcement Authority in the format specified in the request.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards and may request the additional data and/or information if necessary for a complete assessment of compliance.
- [The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Reliability Standard and provides an opportunity for the Registered Entity to comment on the draft assessment.](#)
- The Compliance Enforcement Authority completes and documents the assessment of the Registered Entity for compliance with the Reliability Standard and provides a report to the Registered Entity indicating the results of the spot check.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation [of a Reliability Standard](#) has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**

³If no alleged violations are found, this process normally completes within ninety (90) days of the Compliance Enforcement Authority's receipt of data.

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- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

Figure 3.3.1 Spot Checking Process



3.4 Compliance Violation Investigations ~~of Reliability Standard Violations~~

A Compliance Violation Investigation may be initiated at any time by the Compliance Enforcement Authority, NERC, FERC or another Applicable Governmental Authority in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means.

Compliance Violation Investigations will generally be led by the Regional Entity's staff. ~~For good cause,~~ NERC reserves the right to assume the leadership of a Compliance Violation Investigation.⁴ The Regional Entity shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation.

Compliance Violation Investigations are confidential, unless FERC directs that a Compliance Violation Investigation should be public or that certain information obtained in the Compliance Violation Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Violation Investigation will be made public.

3.4.1 Compliance Violation Investigation Process Steps

The process steps for a Compliance Violation Investigation are as follows and as shown in **Figure 3.4.1**.⁴⁵

- The Compliance Enforcement Authority is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted. ~~The Regional Entity notifies the Registered Entity and NERC within~~ Within two (2) business days of the decision to initiate a Compliance Violation Investigation, the Compliance Enforcement Authority: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Violation Investigation, the requirements to preserve all records and information relevant to the Compliance Violation Investigation and, where appropriate, the reasons for the Compliance Violation Investigation, and (ii) notifies NERC of the initiation of and the reasons for the investigation. ~~Compliance Violation Investigation. While the Compliance Enforcement Authority may, at its discretion, notify the Registered Entity of the reasons for its investigation, the investigation, as it unfolds, need not be limited to this scope.~~
- NERC assigns a NERC ~~Staff~~ staff member to the Compliance Violation Investigation and to serve as a single point of contact for communications with NERC. NERC notifies FERC or other Applicable Governmental Authorities of a Compliance Violation

⁴Examples of situations in which NERC may decide to lead a Compliance Violation Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate investigations into matters that may cross Regional Entity boundaries, (iii) where the possible violation is related to the Regional Entity or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the Regional Entity determines it cannot conduct the Compliance Violation Investigation.

⁴⁵If no alleged violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Violation Investigation.

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Investigation within two (2) business days after NERC is notified of the decision to initiate a Compliance Violation Investigation.

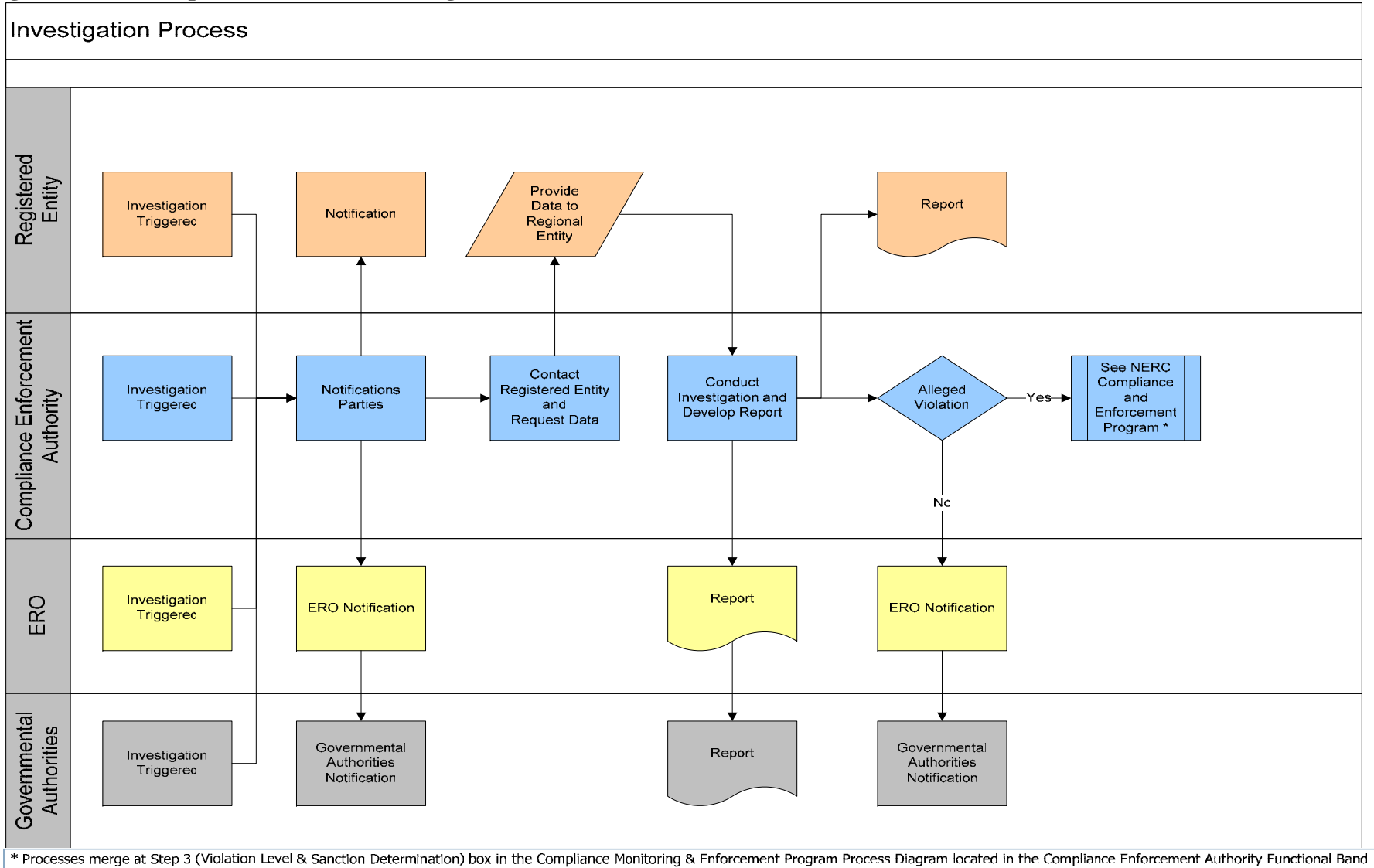
- The Compliance Enforcement Authority requests data or documentation and provides a list of individuals on the investigation team and their recent employment history. The Registered Entity may object to any individual on the investigation team in accordance with Section ~~3.1.5.3.1.5~~; however, the Registered Entity may not object to participation by NERC, by FERC staff or by staff of another Applicable Governmental Authority on the investigation team. If the Reliability Standard does not specify the advance notice period, a request is normally issued with no less than twenty (20) days advance notice.
- Within ten (10) business days of receiving the notification of a Compliance Violation Investigation, a Registered Entity subject to an investigation may object to any member of the investigation team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the Compliance Enforcement Authority ~~prior to the start of on-site audit work~~within such ten (10) business day period. The Compliance Enforcement Authority will make a final determination as to whether the individual will participate in the investigation of the Registered Entity.
- If necessary, the Compliance Violation Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format as specified in the request.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards. The Compliance Enforcement Authority may request additional data and/or information if necessary for a complete assessment or to demonstrate compliance.
- The Compliance Enforcement Authority may require the Registered Entity (i) to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the Compliance Enforcement Authority's requests for documents and information; and (ii) to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath concerning the matters under investigation.
- The Compliance Enforcement Authority completes the assessment of compliance with the Reliability Standard and/or approval of the applicable Mitigation Plan, writes and distributes the report, and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves

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to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**

- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.
- If the Compliance Enforcement Authority determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the investigation has been completed. NERC will in turn notify FERC ~~or~~and any other Applicable Governmental Authority.

Figure 3.4.1 – Compliance Violation Investigation Process



3.5 Self-Reporting

Self-Reporting is encouraged at the time a Registered Entity becomes aware (i) of a violation of a Reliability Standard, or (ii) a change in the ~~Violation Severity Level~~violation severity level of a previously reported violation. Self-Reporting of a violation of a Reliability Standard is encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program and the violation is determined outside the pre-defined reporting schedule.

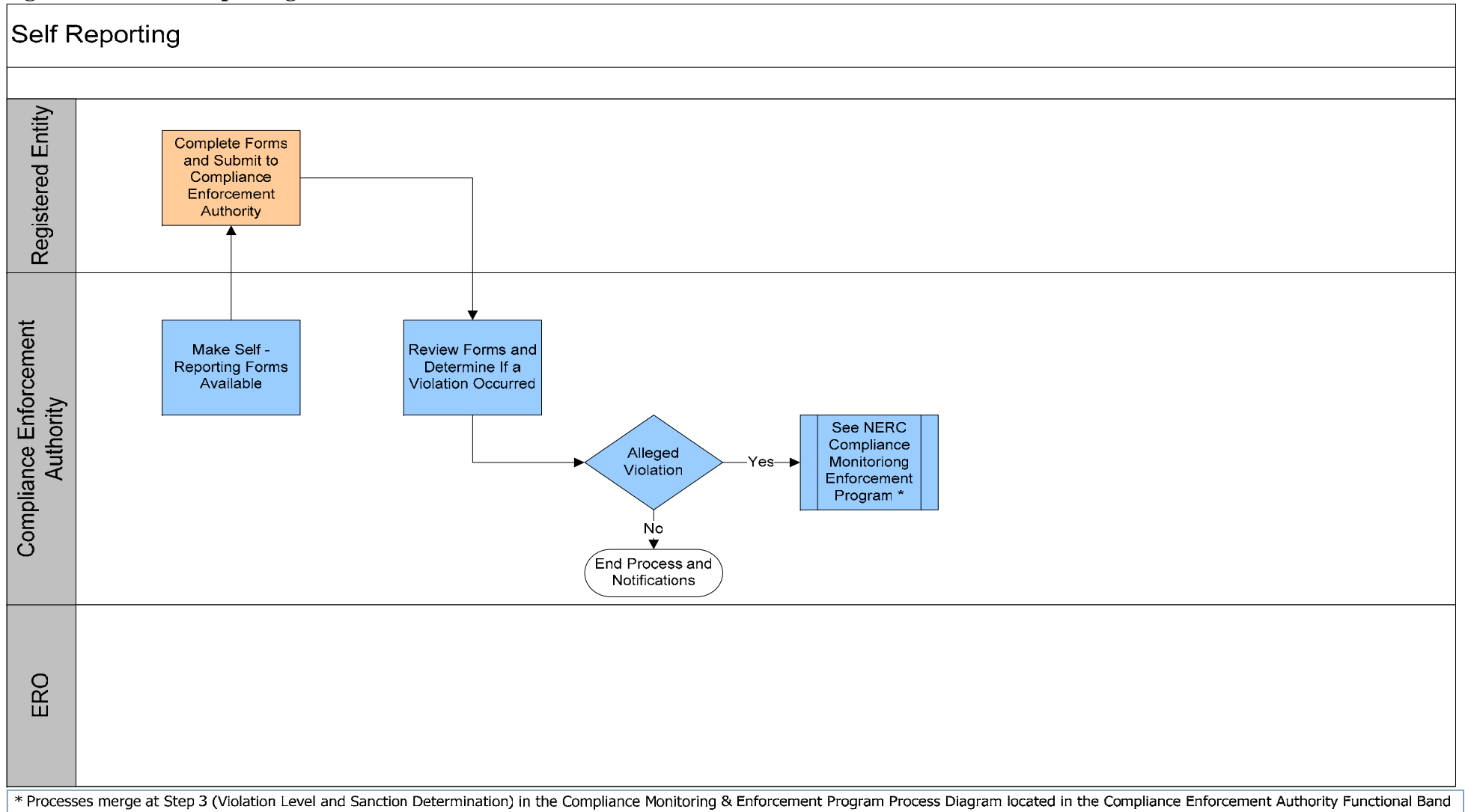
3.5.1 Self-Reporting Process Steps

The process steps for Self-Reporting are as follows and as shown in **Figure 3.5.1**.⁵⁶

- The Compliance Enforcement Authority posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews the information to determine compliance with the Reliability Standards and may request the Registered Entity to provide clarification or additional data and/or information.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standards and any Mitigation Plan, if applicable, and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3, Notice of Alleged Violation, of the Compliance Program Process shown in **Figure 3.0**.
- Regional Entities notify NERC of any Alleged Violations as required by Section 8.0.

⁵⁶This process normally completes within sixty (60) days following the Compliance Enforcement Authority's receipt of data. October 16, 2007

Figure 3.5.1 – Self Reporting Process



3.6 Periodic Data Submittals

The Compliance Enforcement Authority requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, established by the Compliance Enforcement Authority, or on an as-needed basis. Requests for data submittals will be issued by the Compliance Enforcement Authority to Registered Entities with at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the request will normally be issued with no less than twenty (20) days advance notice.

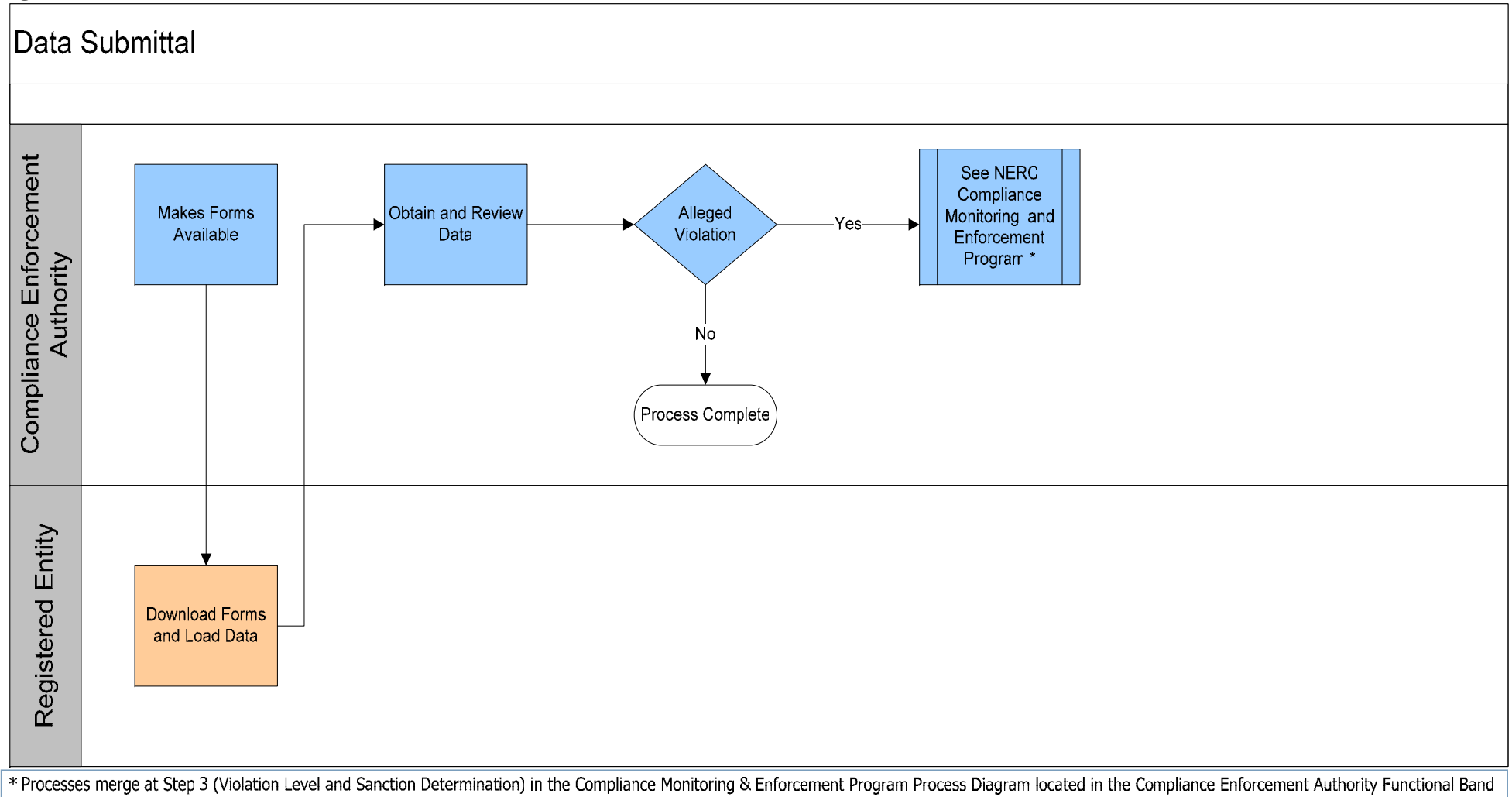
3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows and as shown in **Figure 3.6.1**.⁶⁷

- The Compliance Enforcement Authority posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. The Compliance Enforcement Authority ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being evaluated are maintained and available via its [Web](#) site.
- The Compliance Enforcement Authority makes a request for a Periodic Data Submittal.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format as specified in the request.
- The Compliance Enforcement Authority reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information for a complete assessment or to demonstrate compliance.
- [The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Reliability Standard and provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.](#)
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation [of a Reliability Standard](#) has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities notify NERC of any Alleged Violations as required by Section 8.0.

⁶⁷If no violation(s) are found, this process generally completes within ten (10) business days of the Compliance Enforcement Authority's receipt of data.

Figure 3.6.1 – Data Submittal Process



3.7 Exception Reporting

Some Reliability Standards require reporting of exceptions to compliance with the Reliability Standard as a form of compliance monitoring. The Compliance Enforcement Authority shall require Registered Entities to provide reports identifying any exceptions to the extent required by any Reliability Standard.

The Compliance Enforcement Authority shall also require Registered Entities to confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.

3.8 Complaints

Either NERC or Regional Entities may receive Complaints alleging violations of a Reliability Standard. A Regional Entity will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for a Compliance Violation Investigation, except that NERC will review any Complaint (1) that is related to [a Regional Entity or its affiliates, divisions, committees or subordinate structures](#), (2) where the Regional Entity determines it cannot conduct the review, or (3) if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.

If the Complaint is submitted to NERC, NERC will forward the information to the Regional Entity, as appropriate.

All anonymous Complaints will be reviewed and any resulting Compliance Violation Investigations conducted by NERC will be conducted in accordance with Section 3.8.2 to prevent disclosure of the identity of the complainant.

The Compliance Enforcement Authority conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint to determine if it provides sufficient basis for a Compliance Violation Investigation. The Regional Entity will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, the Compliance Enforcement Authority determines that a Compliance Violation Investigation is warranted, a Compliance Violation Investigation will be conducted in accordance with Section 3.4.

3.8.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows and as shown in **Figure 3.8.1**.⁷⁸

- The complainant notifies NERC or a Regional Entity using the NERC compliance hotline, submitting a NERC ~~complaint~~[Complaint](#) reporting form, or by other means. A link to the ~~complaint~~[Complaint](#) reporting form will be posted on the NERC and Regional

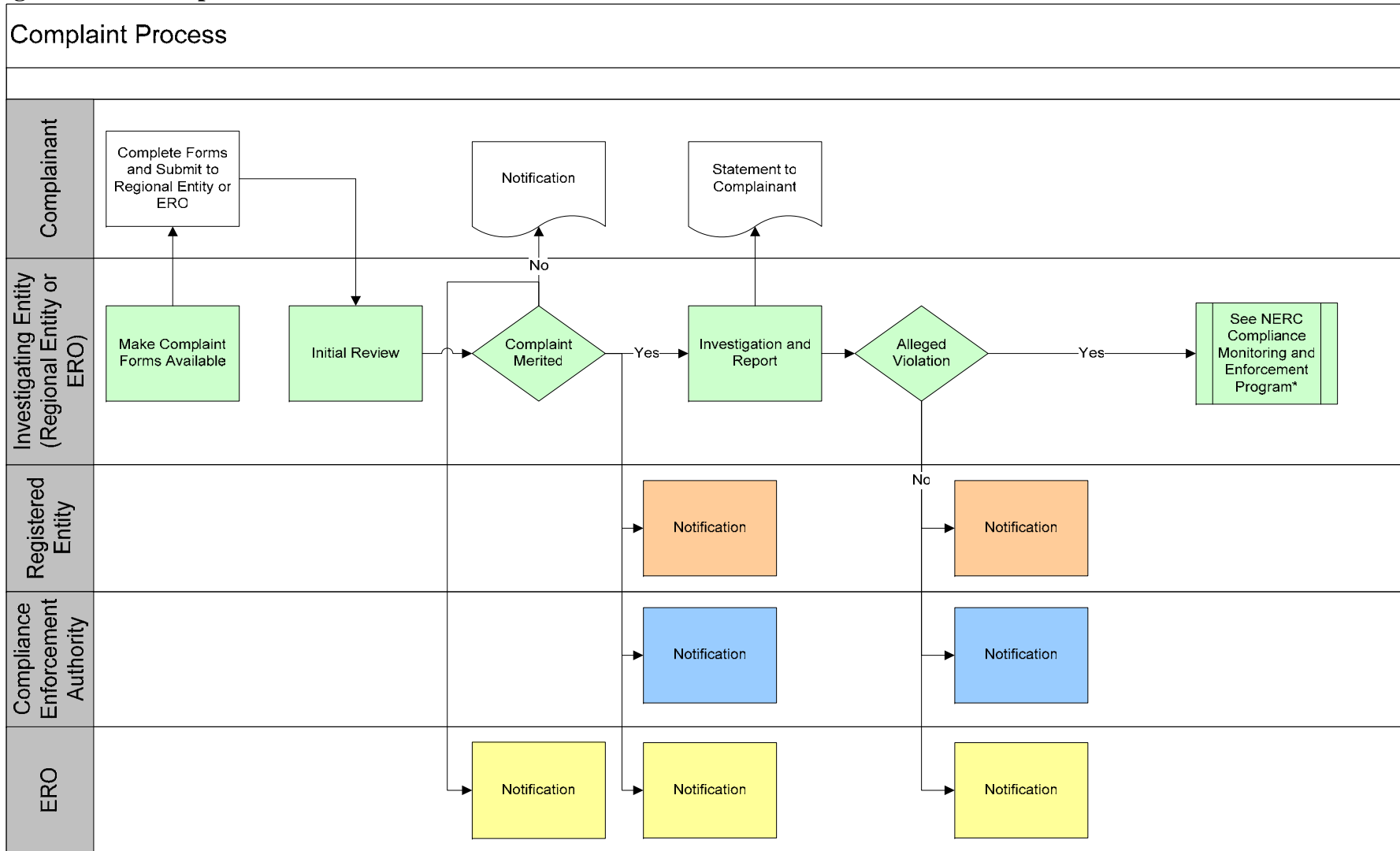
⁷⁸If no violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.

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Entity Web sites. The Complaint should include sufficient information to enable NERC or the Regional Entity to make an assessment of whether the initiation of a Compliance Violation Investigation is warranted. NERC or the Regional Entity may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.

- If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is warranted, it initiates the Compliance Violation Investigation in accordance with Section 3.4; otherwise it takes no further action. The Compliance Enforcement Authority notifies the complainant, the Registered Entity, and NERC of the Compliance Violation Investigation. If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.
- The Compliance Enforcement Authority fully documents the Complaint and the Complaint review, whether a Compliance Violation Investigation is initiated or not.

Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

3.8.2 Anonymous Complainant Notification Procedure

An anonymous complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, can report the ~~Alleged Violation~~[possible violation](#) and request that the complainant's identity not be disclosed.⁸⁹ All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.8.1. Anonymous Complaints received by a Regional Entity will either be directed to NERC or the Regional Entity will collect and forward the information to NERC, at the Regional Entity's discretion. Neither NERC nor the Regional Entity shall disclose the identity of any person or entity reporting ~~Alleged Violations~~[possible violations](#) to NERC or to a Regional Entity that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where a Regional Entity collects the information, by NERC and the Regional Entity. If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

4.0 ANNUAL IMPLEMENTATION PLANS

4.1 NERC Compliance [Monitoring and Enforcement](#) Program Implementation Plan

NERC will maintain and update the NERC Implementation Plan, to be carried out by Compliance Enforcement Authorities in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the Regional Entities by October 1 of each year and will specify the Reliability Standards requiring reporting by Registered Entities to the Compliance Enforcement Authority to provide verification of compliance through one of the monitoring methods described in this Compliance Plan document. The NERC Implementation Plan will be posted on the NERC ~~Web~~[web](#) site.

4.2 Regional Entity Implementation Plan

By November 1 of each year, Regional Entities will submit a Regional Implementation Plan for the following calendar year to NERC for approval. The Regional Implementation Plan and the Regional Entity's other relevant Compliance Program documents shall be posted on the Regional Entity's Web site.

5.0 ENFORCEMENT ACTIONS

The Compliance Enforcement Authority shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the Compliance Enforcement Authority's area of responsibility, and (ii) if so, the appropriate remedial actions, and penalties and sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction Guidelines* by Regional Entities by direct oversight and review of penalties and sanctions, and each Regional

⁸⁹NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see www.nerc.com for additional information).

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Entity shall provide to NERC such information as is requested by NERC concerning any penalty, sanction, or remedial actions imposed by the Regional Entity.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

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5.1 Notification to Registered Entity of Alleged Violation

If the Compliance Enforcement Authority alleges that a Registered Entity has violated a Reliability Standard, the Compliance Enforcement Authority shall provide written notice of Alleged Violation and sanction (signed by an officer or designee) to the Registered Entity (CEO or equivalent and compliance contact) and NERC. The Compliance Enforcement Authority may also issue an initial notice of Alleged Violation, without specifying the proposed penalty or sanction, to the Registered Entity. The notice of Alleged Violation and sanction shall contain, at a minimum:

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the Compliance Enforcement Authority believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by the Compliance Enforcement Authority to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the Compliance Enforcement Authority will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:
 - 1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or
 - 2. agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or
 - 3. contest both the Alleged Violation and proposed penalty or sanction, ~~and~~
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction;
- (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed penalty or sanction, the Registered Entity may elect to have a hearing conducted pursuant to either (i) the short-form procedure in Section 1.3.2, or (ii) the full hearing procedure, in Attachment 2, Hearing Process, and

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~~(vi)~~ (viii) required procedures to submit the Registered Entity's Mitigation Plan.

NERC shall forward a copy of the notice of Alleged Violation to FERC and any other Applicable Governmental Authority within two (2) business days of receipt from the Compliance Enforcement Authority.

Upon acceptance of the Alleged Violation and proposed penalty or sanction, the ~~final~~ notice of the ~~violation, penalty, and or~~ sanction or other enforcement action will then be processed and issued to the Registered Entity.

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5.2 Registered Entity Response

If the Registered Entity does not contest or does not respond to the notice of ~~violation~~Alleged Violation within thirty (30) days, it shall be deemed to have accepted the Compliance Enforcement Authority's determination of violation and sanction (if applicable), in which case the Compliance Enforcement Authority shall issue to the Registered Entity and NERC a final report of Confirmed Violation. A Registered Entity may provide a written explanatory statement to accompany the final report.

If the Registered Entity contests the Alleged Violation or the proposed sanction, the Registered Entity shall submit to the Compliance Enforcement Authority a response explaining its position, signed by an officer ~~or equivalent,~~ employee, attorney or other authorized representative together with any supporting information and documents. The Compliance Enforcement Authority shall schedule a conference with the Registered Entity within ten (10) business days after receipt of the response. If the Compliance Enforcement Authority and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. If no hearing request is made the violation will become a Confirmed Violation when filed by NERC with FERC or ~~the~~other Applicable Governmental Authority.

If a hearing is requested the Compliance Enforcement Authority shall initiate the hearing process by convening a hearing body and issuing a written notice of hearing to the Registered Entity and the hearing body and identifying the Compliance Enforcement Authority's designated hearing representative.⁹¹⁰

5.3 Hearing Process for Compliance Hearings

The Compliance Enforcement Authority ~~Hearing Process~~hearing process is set forth in **Attachment 2**.

5.4 Settlement Process

Settlement negotiations may occur at any time ~~from,~~ including prior to the issuance of a notice of Alleged Violation and sanction until a ~~Notice~~notice of ~~Penalty~~penalty is filed with FERC or ~~another~~ Applicable Governmental Authority. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the Compliance Enforcement Authority shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf. All settlement agreements must conform to the requirements of NERC Rule of Procedure ~~403.18~~403.19 and, if approved, must provide for waiver of the Registered Entity's right to further hearings and appeal.

⁹¹⁰If the dispute involves a proposed Mitigation Plan, which has not been accepted by the Compliance Enforcement Authority, the Registered Entity may file a request for hearing with the Compliance Enforcement Authority.

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The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement.

The Regional Entity shall report the terms of all settlements of compliance matters to NERC. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances. Based on this review, NERC will either approve the settlement or reject the settlement and notify the Regional Entity and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, the Regional Entity will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC. ~~If a settlement cannot be reached, the compliance hearing process shall continue to conclusion.~~

NERC will (i) report the approved settlement of the violation to FERC or ~~the other~~ Applicable Governmental Authority, and (ii) publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement. The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

5.5 NERC Appeal Process

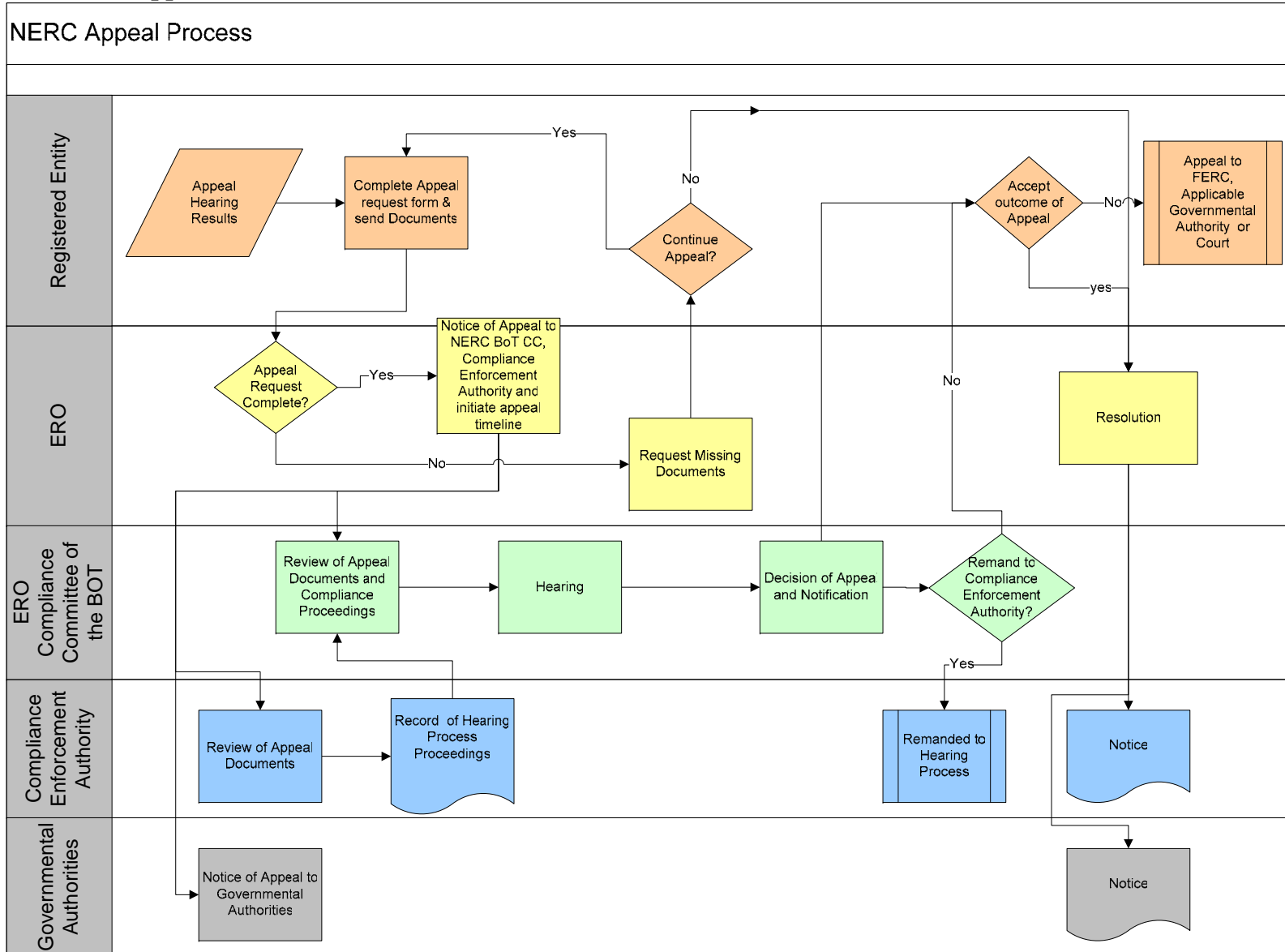
The Registered Entity may appeal the hearing body's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410. The steps for the NERC appeals process are as shown in **Figure 5.5:**⁴⁰¹¹

On appeal, NERC shall either affirm the Regional Entity decision or remand to the Regional Entity with reasons for its decision. In addition, it may direct the Regional Entity to revise a decision that clearly conflicts with the goal of consistent national reliability enforcement or where the requirement to revise the decision is necessary for NERC's oversight of Regional Entity compliance activities, in which case any participant may reopen the proceedings on any issue.

~~⁴⁰This process generally completes within ninety (90) days of NERC's receipt of request for appeal.~~

¹¹This process generally completes within ninety (90) days of NERC's receipt of request for appeal.

Figure 5.5 – NERC Appeal Process



5.6 Notice of Penalty

If the Registered Entity does not dispute the notice of Alleged Violation and the penalty and sanction or a decision has been entered finding a violation and all appeals have been concluded, NERC shall file a ~~Notice~~notice of ~~Penalty~~penalty with FERC ~~or~~and any other Applicable Governmental Authority. NERC will include with the ~~Notice~~notice of ~~Penalty~~penalty any statement provided by the Registered Entity as set forth in Section 8.0. NERC may direct the Regional Entity to revise a penalty determination that clearly conflicts with the goal of consistent national reliability enforcement, in which case any participant may reopen the proceedings on any issue, irrespective of whether the issue was previously litigated, settled or unopposed.

The penalty or sanction will be effective upon expiration of the thirty (30) day period following filing with FERC of the notice of penalty or, if FERC decides to review the penalty or sanction, upon final determination by FERC.

6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS

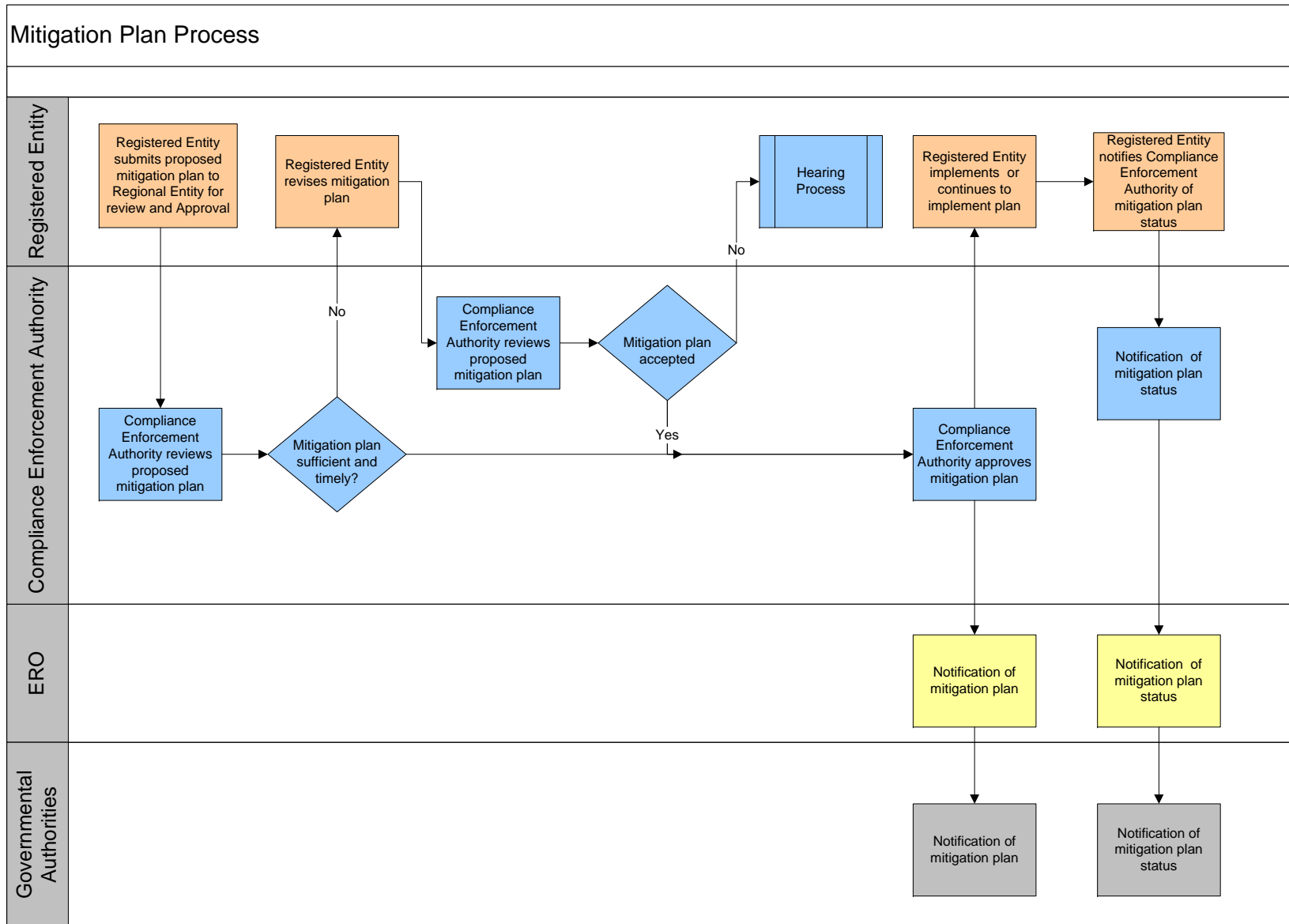
Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

6.1 Requirement for Submission of Mitigation Plans

A Registered Entity found to be in violation of a Reliability Standard shall file with the Compliance Enforcement Authority (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation.

Figure 6.1 shows the process steps for Mitigation Plans.

Figure 6.1 – Mitigation Plan Process



6.2 Contents of Mitigation Plans

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to prevent recurrence of the Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the bulk power system reliability and an action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate

The Mitigation Plan shall be signed by an officer ~~or equivalent~~, employee, attorney or other authorized representative of the Registered Entity, which if applicable, shall be the ~~officer~~ person that signed the Self-Certification or Self Reporting submittals.

6.3 Timetable for Completion of Mitigation Plans

The Mitigation Plan shall be completed in time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay. The Compliance Enforcement Authority will expect full compliance with the Reliability Standard to which the Mitigation Plan is applicable at the next report or assessment of the Registered Entity. At the Compliance Enforcement Authority's discretion, the completion deadline may be extended for good cause including: (i) short

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assessment periods (i.e., event driven or monthly assessments), and (ii) construction requirements in the Mitigation Plan that extend beyond the next assessment period or other extenuating circumstances. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by the Compliance Enforcement Authority with associated sanctions or penalties. Regional Entities will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, the Compliance Enforcement Authority will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no penalties or sanctions will apply. Regional Entities will also notify NERC of any such waivers of violations of Reliability Standards.

A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the Compliance Enforcement Authority at least five (5) business days before the original milestone or completion date. The Compliance Enforcement Authority may accept a request for an extension or modification of a Mitigation Plan if the Compliance Enforcement Authority determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by the Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any penalties or sanctions imposed for such violations.

6.4 Submission of Mitigation Plans

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the notice of Alleged Violation and penalty or sanction, if the Registered Entity does not contest the violation and penalty or sanction. If the Registered Entity disputes the notice of Alleged Violation or penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the hearing body, unless the Registered Entity elects to appeal the hearing body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or penalty or sanction; such submission shall not be deemed an admission of a violation or the appropriateness of a penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the Compliance Enforcement Authority before the hearing body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

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6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans

Unless extended by the Compliance Enforcement Authority, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. If the Compliance Enforcement Authority rejects a Mitigation Plan, the Compliance Enforcement Authority will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The Compliance Enforcement Authority will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the Compliance Enforcement Authority will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Process, by submitting to the Compliance Enforcement Authority a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the Compliance Enforcement Authority will issue a written statement accepting a Mitigation Plan it deems as appropriate.

Regional Entities will notify NERC within (5) five business days of the acceptance of a Mitigation Plan, and will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and will notify the Regional Entity, which will in turn notify the Registered Entity, as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the Regional Entity, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. NERC will submit to the Commission, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan.

6.6 Completion/Confirmation of Implementation of Mitigation Plans

The Registered Entity shall provide updates at least quarterly to the Compliance Enforcement Authority on the progress of the Mitigation Plan. The Compliance Enforcement Authority will track the Mitigation Plan to completion and may conduct on-site visits and review status during audits to monitor Mitigation Plan implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to the Compliance Enforcement Authority certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity's ~~officer or equivalent responsible for the plan~~, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for the Compliance Enforcement Authority to verify completion. The Compliance Enforcement Authority shall request such data or information and conduct follow-up assessments, on-site or other Spot Checking, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard.

In the event all required actions in the ~~plan~~ Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3,

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any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the Compliance Enforcement Authority. In addition, the Compliance Enforcement Authority may conduct a ~~compliance audit~~[Compliance Audit](#) of, or issue a Remedial Action Directive to, the Registered Entity.

Regional Entities will provide to NERC the quarterly status reports and such other information as NERC requests, and will notify NERC when each Mitigation Plan is verified to have been completed.

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6.7 Recordkeeping

The Compliance Enforcement Authority will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, ~~self-reported, audit, investigation~~[Self-Reporting, Compliance Audit, Compliance Violation Investigation](#), Complaint, etc.
- Date of notification of violation and sanction.
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.

7.0 REMEDIAL ACTION DIRECTIVES

The Compliance Enforcement Authority may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the bulk power system from an imminent threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to an Alleged Violation of a Reliability Standard. The Compliance Enforcement Authority will specify if a ~~remedial action~~[Remedial Action Directive](#) obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, the Regional Entity shall consult the Reliability Coordinator for the Registered Entity, if applicable, to ensure that the ~~remedial action~~[Remedial Action Directive](#) is not in conflict with directives issued by the Reliability Coordinator.

Any Remedial Action Directive ~~shall include~~[must be provided in a notice to the Registered Entity and shall include: \(i\) a list of the violations or possible violations of Reliability Standards that are the basis for issuance of the Remedial Action Directive; \(ii\) a discussion of the factual](#)

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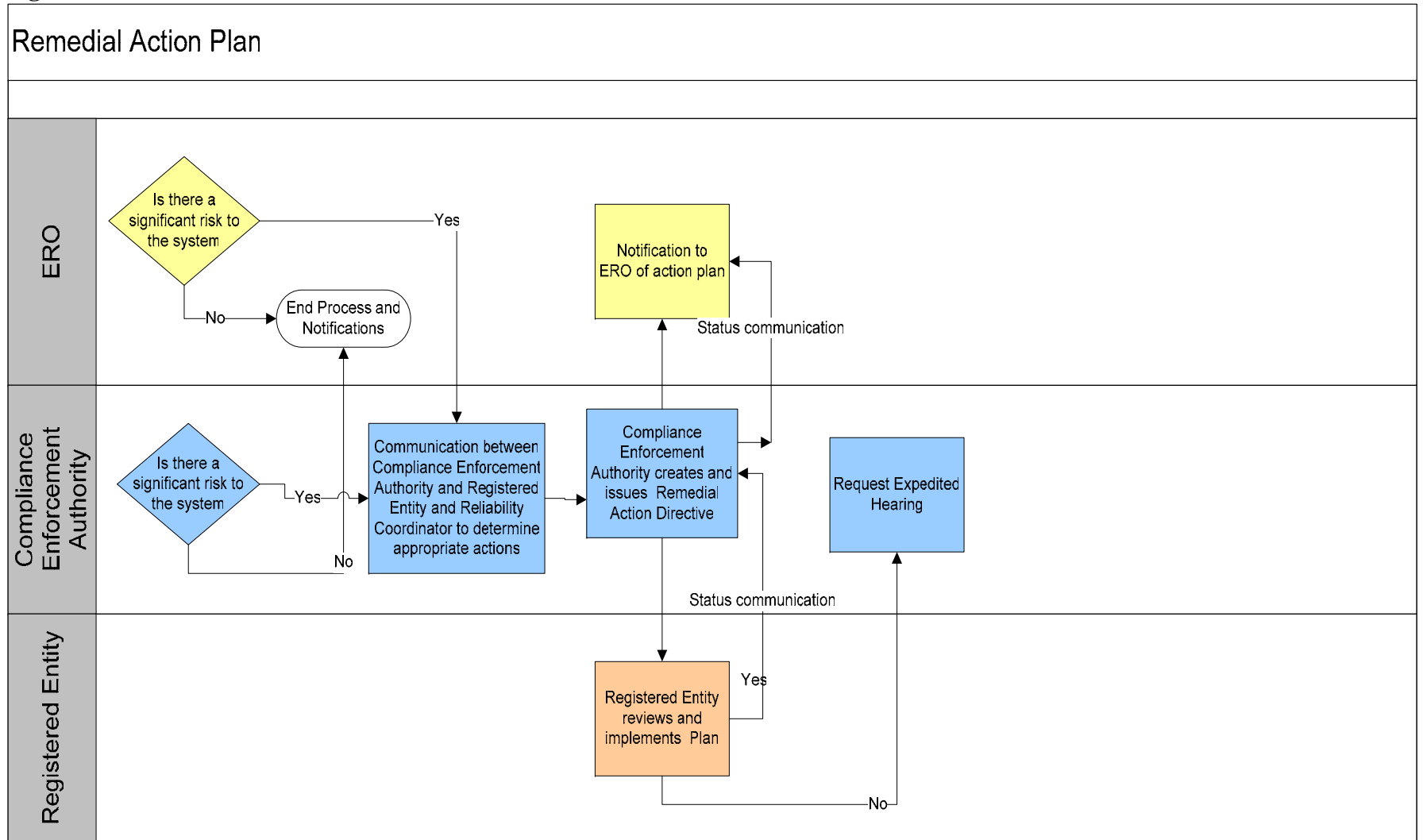
basis for the Remedial Action Directive; (iii) a deadline for compliance and ~~will advise~~(iv) notice to the Registered Entity that failure to comply with the directive ~~within~~by the ~~required deadline~~Required Date may result in further Remedial Action Directives or significantly increased sanctions. The Compliance Enforcement Authority will monitor implementation of Remedial Action Directives as necessary to verify compliance.

The Regional Entity will notify NERC within two (2) business days after issuing a Remedial Action Directive.

~~The~~Once the Compliance Enforcement Authority has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to the Compliance Enforcement Authority within two (2) business days following ~~issuance of the directive and may request an expedited hearing. The~~receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section ~~10.01.9~~1.9 of **Attachment 2, Hearing Process**. ~~The Registered Entity~~Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of Attachment 2, Hearing Process shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive until the hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

Figure 7.0 shows the process steps for a ~~remedial action~~Remedial Action Directive.

Figure 7.0 – Remedial Action Process



8.0 REPORTING AND DISCLOSURE

Regional Entities shall prepare and submit to NERC all required reports (including those required by NERC Rules of Procedure, Sections 403.15, 403.17 ~~Sections 403.14, 403.18~~ and 403.19, containing current information concerning (1) Registered Entity compliance with Reliability Standards, (2) all Alleged and Confirmed Violations of Reliability Standards by Registered Entities, (3) the status of Alleged Violations, (4) sanctions and penalties, (5) ~~remedial actions~~ Remedial Action Directives imposed, and (6) Mitigation Plan(s) accepted including dates for all required actions and for completion.

Regional Entities shall report to NERC, on a confidential basis, any ~~Alleged Violations~~ allegations or evidence of violations of Reliability Standards regardless of significance, whether verified or still under investigation, that are received or obtained by the Regional Entity through any means within five (5) business days, unless the violation indicated or alleged has resulted in or has the potential to result in, a reduced level of reliability to the bulk power system (as provided in Section 408 of the NERC Rules of Procedure), in which cases the Regional Entity shall notify NERC within forty-eight (48) hours. NERC shall notify FERC ~~or~~ and any other Applicable Governmental Authority within two (2) business days of receiving ~~notices~~ such a report from the Regional Entity. Such reports shall include information regarding the nature of the ~~Alleged Violation~~ violation indicated or alleged and its potential impact on the reliability of the bulk power system, the name of the Registered Entity involved, the status and timetable of any compliance violation assessment, and the name of a Regional Entity staff person knowledgeable about the ~~violation or Alleged Violation~~ information to serve as a point of contact, as required by Section 408 of the NERC Rules of Procedure and 18 C.F.R. §39.7(b).

Regional Entities shall report to NERC at least quarterly the status of violations of Reliability Standards, regardless of significance, that have not yet resulted in a final determination of violation or have not completed the ~~Hearing Process~~ hearing process, or for which mitigation activities (including activities being carried out pursuant to a settlement) have not been completed. Regional Entities will ensure the information is current when these reports are provided.

Regional Entities shall report to NERC all Confirmed Violations of Reliability Standards by Registered Entities including all penalties, sanctions, Mitigation Plans and schedules, and settlements, within ten (10) business days of each determination. At the same time, Regional Entities will provide the report to the affected Registered Entity, accompanied by a notice that the Registered Entity may provide a statement to NERC to accompany the report when posted by NERC. The Registered Entity's statement must ~~be on company letterhead and~~ include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

NERC will publicly post each report of a Confirmed Violation, together with any statement submitted by the Registered Entity, no sooner than five (5) business days after the report is provided by the Regional Entity to NERC and the Registered Entity.

NERC will provide reports quarterly to FERC and ~~the~~ any other Applicable Governmental Authorities on the status of all Alleged and Confirmed Violations for which mitigation activities have not been completed. NERC will publish public reports quarterly on its Web site of all

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Confirmed Violations of Reliability Standards during the quarter just completed, with the identity of the violator.

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9.0 DATA RETENTION AND CONFIDENTIALITY

9.1 Records Management

The Compliance Enforcement Authority records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the Reliability Standards data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

9.2 Retention Requirements

The Compliance Enforcement Authority records management policy will require that information and data generated or received pursuant to Compliance Program activities, including ~~a Hearing Process~~ Compliance Audits, Self-Certifications, Spot Checking, Compliance Violation Investigations, Self-Reporting, Periodic Data Submittals, Exception Reporting, and Complaints, as well as a hearing process, will be retained for ~~a minimum~~ the longer of (i) five (5) years ~~unless a different~~ or (ii) any retention period ~~is~~ specified in a Reliability Standard or by ~~an~~ FERC or another Applicable Governmental Authority. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

Upon request from NERC, Regional Entities will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity under the Compliance Program. In providing the information and data to NERC, the Regional Entity shall preserve any mark of confidentiality.

9.3 Confidentiality and Critical Energy Infrastructure Information

9.3.1 Definitions

Information or data generated or received pursuant to Compliance Program activities, including a ~~Hearing Process~~ hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “confidential information,” “confidential business and market information,” ~~“Critical Energy Infrastructure Information,”~~ and ~~“Critical Infrastructure~~ critical energy infrastructure information,” and “critical infrastructure” shall have the meanings stated in Section 1501 of the NERC Rules of Procedure.

9.3.2 Protection of Confidential Information

The Compliance Enforcement Authority personnel (including any contractors, consultants and industry volunteers) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning ~~Confidential Information~~ confidential information.

9.3.3 Critical Energy Infrastructure Information

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The Compliance Enforcement Authority will keep confidential all ~~Critical Energy Infrastructure Information~~critical energy infrastructure information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be ~~Critical Energy Infrastructure Information~~critical energy infrastructure information shall be redacted and shall not be released publicly.

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ATTACHMENT 1

PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

If data, information, or other reports (including Mitigation Plans) requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may sequentially execute the following steps for each Reliability Standard for which the Compliance Enforcement Authority has requested data, information, or other reports. The Compliance Enforcement Authority however will afford the Registered Entity reasonable opportunity to resolve a difficulty submitting data due to time or format issues.

- Step 1: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's designated contact.
- Step 2: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's ~~Vice President~~vice president or equivalent responsible for compliance (with a copy to NERC and the Registered Entity's designated contact).
- Step 3: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's ~~Chief Executive Officer~~chief executive officer or equivalent (with a copy to NERC, the Registered Entity's ~~Vice President~~vice president or equivalent responsible for compliance and the Registered Entity's designated contact).
- A full ~~compliance-audit~~Compliance Audit may be scheduled at this step.
- Step 4: Thirty (30) days after the Required Date, a Reliability Standard violation may be applied at the Severe ~~Compliance~~Violation Severity Level.
- Step 4 does not apply to Compliance Audits and ~~mitigation~~Mitigation Plan tracking requests.

ATTACHMENT 3

**CLEAN (3A) AND REDLINED (3B) VERSIONS OF
NERC RULES OF PROCEDURE**

Rules of Procedure

Effective: [New Date]

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SECTION 100 — APPLICABILITY OF RULES OF PROCEDURE

NERC and NERC members shall comply with these rules of procedure. Each regional entity shall comply with these rules of procedure as applicable to functions delegated to the regional entity by NERC or as required by an appropriate governmental authority or as otherwise provided.

Each bulk power system owner, operator, and user shall comply with all rules of procedure of NERC that are made applicable to such entities by approval pursuant to applicable legislation or regulation, or pursuant to agreement.

Any entity that is unable to comply or that is not in compliance with a NERC rule of procedure shall immediately notify NERC in writing, stating the rule of concern and the reason for not being able to comply with the rule.

NERC shall evaluate each case and inform the entity of the results of the evaluation. If NERC determines that a rule has been violated, or cannot practically be complied with, NERC shall notify the applicable governmental authorities and take such other actions as NERC deems appropriate to address the situation.

NERC shall comply with each approved reliability standard that identifies NERC or the electric reliability organization as a responsible entity. Regional Entities shall comply with each approved reliability standard that identifies Regional Entities as responsible entities. A violation by NERC or a Regional Entity of such a reliability standard shall constitute a violation of these Rules of Procedure.

SECTION 200 — DEFINITIONS OF TERMS

201. General

For purposes of NERC rules of procedure, the terms defined in Section 202 shall have the meaning set forth therein. Other terms are defined within particular sections of the rules of procedure. Other terms used but not defined in the rules of procedure shall be defined in NERC's Bylaws, the NERC Glossary of Terms Used in Reliability Standards adopted in conjunction with NERC's Reliability Standards, or in accordance with their commonly understood and used technical meanings in the electric power industry, including applicable codes and standards.

202. Specific Definitions

“Board” means the Board of Trustees of NERC.

“Bulk power system” means facilities and control systems necessary for operating an interconnected electric energy supply and transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

“Canadian” means one of the following: (a) a company or association incorporated or organized under the laws of Canada, or its designated representative(s) irrespective of nationality; (b) an agency of a federal, provincial, or local government in Canada, or its designated representative irrespective(s) of nationality; or (c) a self-representing individual who is a Canadian citizen residing in Canada.

“Confirmed violation” is one for which an entity has: 1) accepted the finding of the violation by a regional entity or NERC and will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.

“Electric reliability organization” or “ERO” means the organization that is certified by the Commission under Section 39.3 of its regulations, the purpose of which is to establish and enforce Reliability Standards for the bulk power system in the United States. The organization may also have received recognition by applicable governmental authorities in Canada and Mexico to establish and enforce reliability standards for the bulk power systems of the respective countries.

“Entity variance” means an aspect of a reliability standard that applies only within a particular entity or a subset of entities within a limited portion of a regional entity, such as a variance that would apply to a regional transmission organization or particular market or to a subset of bulk power system owners, operators or users. An entity variance may not be inconsistent with or less stringent than the reliability standards as it would otherwise exist without the entity variance. An entity variance shall be approved only through the NERC standards development procedure and shall be made part of the NERC reliability standards.

“ERO governmental authority” is a government agency that has subject matter jurisdiction over the reliability of the bulk power system within its jurisdictional territory. In the United States, the ERO governmental authority is the Federal Energy Regulatory Commission. In Canada, the ERO governmental authority resides with applicable federal and provincial governments who may delegate duties and responsibilities to other entities. Use of the term is intended to be inclusive of all applicable authorities in the United States, Canada, and Mexico, and is not restricted to those listed here.

“Net Energy for Load” or “NEL” means net generation of an electric system plus energy received from others less energy delivered to others through interchange. It includes system losses but excludes energy required for the storage of energy at energy storage facilities.

“Regional reliability organization” means each of the following organizations or any successor organizations: Electric Reliability Council of Texas, Florida Reliability Coordinating Council, Midwest Reliability Organization, Northeast Power Coordinating Council, ReliabilityFirst Corporation, SERC Reliability Corporation, Southwest Power Pool, and Western Electricity Coordinating Council.

“Reliable operation” means operating the elements of the bulk power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cyber security incident, or unanticipated failure of system elements.

“Regional criteria” means reliability requirements developed by a regional reliability organization that are necessary to implement, to augment, or to comply with reliability standards, but which are not reliability standards. Such regional criteria may be necessary to account for physical differences in the bulk power system but are not inconsistent with reliability standards nor do they result in lesser reliability. Such regional criteria are not enforceable pursuant to NERC-delegated authorities, but may be enforced through other available mechanisms. Regional criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents.

“Regional reliability standard” means a type of reliability standards that is applicable only within a particular regional entity or group of regional entities. A regional reliability standard may augment, add detail to, or implement another reliability standard or cover matters not addressed by other reliability standards. Regional reliability standards, upon adoption by NERC and approval by the applicable ERO governmental authority(ies), shall be reliability standards and shall be enforced within the applicable regional entity or regional entities pursuant to delegated authorities.

“Reliability standard” means a requirement to provide for reliable operation of the bulk power system, including without limiting the foregoing, requirements for the operation of existing bulk power system facilities, including cyber security protection, and including the design of planned additions or modifications to such facilities to the extent necessary

for reliable operation of the bulk power system, but the term does not include any requirement to enlarge bulk power system facilities or to construct new transmission capacity or generation capacity. A reliability standard shall not be effective in the United States until approved by the Federal Energy Regulatory Commission and shall not be effective in other jurisdictions until made or allowed to become effective by the applicable governmental authority.

“Variance” means an aspect or element of a reliability standard that applies only within a particular regional entity or group of regional entities, or to a particular entity or class of entities. A variance allows an alternative approach to meeting the same reliability objective as the reliability standard, and is typically necessitated by a physical difference. A variance is embodied within a reliability standard and as such, if adopted by NERC and approved by the ERO governmental authority, shall be enforced within the applicable regional entity or regional entities pursuant to delegated authority.

SECTION 300 — RELIABILITY STANDARDS DEVELOPMENT

301. General

NERC shall develop and maintain reliability standards that apply to bulk power system owners, operators, and users and that enable NERC and regional entities to measure the reliability performance of bulk power system owners, operators, and users; and to hold them accountable for reliable operation of the bulk power systems. The reliability standards shall be technically excellent, timely, just, reasonable, not unduly discriminatory or preferential, in the public interest, and consistent with other applicable standards of governmental authorities.

302. Essential Attributes for Technically Excellent Reliability Standards

1. **Applicability** — Each reliability standard shall clearly identify the functional classes of entities responsible for complying with the reliability standard, with any specific additions or exceptions noted. Such functional classes¹ include: reliability coordinators, balancing authorities, transmission operators, transmission owners, generator operators, generator owners, interchange authorities, transmission service providers, market operators, planning authorities, transmission planners, resource planners, load-serving entities, purchasing-selling entities, and distribution providers. Each reliability standard shall also identify the geographic applicability of the standard, such as the entire North American bulk power system, an interconnection, or within a regional entity area. A standard may also identify any limitations on the applicability of the standard based on electric facility characteristics.
2. **Reliability Objectives** — Each reliability standard shall have a clear statement of purpose that shall describe how the standard contributes to the reliability of the bulk power system. The following general objectives for the bulk power system provide a foundation for determining the specific objective(s) of each reliability standard:
 - 2.1 **Reliability Planning and Operating Performance** — Bulk power systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions.
 - 2.2 **Frequency and Voltage Performance** — The frequency and voltage of bulk power systems shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
 - 2.3 **Reliability Information** — Information necessary for the planning and operation of reliable bulk power systems shall be made available to those entities responsible for planning and operating bulk power systems.

¹ These functional classes of entities are derived from NERC's Reliability Functional Model. When a standard identifies a class of entities to which it applies, that class must be defined in the Glossary of Terms Used in Reliability Standards.

- 2.4 **Emergency Preparation** — Plans for emergency operation and system restoration of bulk power systems shall be developed, coordinated, maintained, and implemented.
- 2.5 **Communications and Control** — Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of bulk power systems.
- 2.6 **Personnel** — Personnel responsible for planning and operating bulk power systems shall be trained and qualified, and shall have the responsibility and authority to implement actions.
- 2.7 **Wide-area View** — The reliability of the bulk power systems shall be assessed, monitored, and maintained on a wide-area basis.
- 2.8 **Security** — Bulk power systems shall be protected from malicious physical or cyber attacks.
3. **Performance Requirement or Outcome** — Each reliability standard shall state one or more performance requirements, which if achieved by the applicable entities, will provide for a reliable bulk power system, consistent with good utility practices and the public interest. Each requirement is not a “lowest common denominator” compromise, but instead achieves an objective that is the best approach for bulk power system reliability, taking account of the costs and benefits of implementing the proposal.
4. **Measurability** — Each performance requirement shall be stated so as to be objectively measurable by a third party with knowledge or expertise in the area addressed by that requirement. Each performance requirement shall have one or more associated measures used to objectively evaluate compliance with the requirement. If performance can be practically measured quantitatively, metrics shall be provided to determine satisfactory performance.
5. **Technical Basis in Engineering and Operations** — Each reliability standard shall be based upon sound engineering and operating judgment, analysis, or experience, as determined by expert practitioners in that particular field.
6. **Completeness** — Reliability standards shall be complete and self-contained. The standards shall not depend on external information to determine the required level of performance.
7. **Consequences for Noncompliance** — In combination with guidelines for penalties and sanctions, as well as other ERO and regional entity compliance documents, the consequences of violating a standard are clearly presented to the entities responsible for complying with the standards.
8. **Clear Language** — Each reliability standard shall be stated using clear and unambiguous language. Responsible entities, using reasonable judgment and in

keeping with good utility practices, are able to arrive at a consistent interpretation of the required performance.

9. **Practicality** — Each reliability standard shall establish requirements that can be practically implemented by the assigned responsible entities within the specified effective date and thereafter.
10. **Consistent Terminology** — To the extent possible, reliability standards shall use a set of standard terms and definitions that are approved through the NERC reliability standards development process.

303. Relationship between Reliability Standards and Competition

To ensure reliability standards are developed with due consideration of impacts on competition, to ensure standards are not unduly discriminatory or preferential, and recognizing that reliability is an essential requirement of a robust North American economy, each reliability standard shall meet all of these market-related objectives:

1. **Competition** — A reliability standard shall not give any market participant an unfair competitive advantage.
2. **Market Structures** — A reliability standard shall neither mandate nor prohibit any specific market structure.
3. **Market Solutions** — A reliability standard shall not preclude market solutions to achieving compliance with that standard.
4. **Commercially Sensitive Information** — A reliability standard shall not require the public disclosure of commercially sensitive information or other confidential information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards.
5. **Adequacy** — NERC shall not set standards defining an adequate amount of, or requiring expansion of, bulk power system resources or delivery capability.

304. Essential Principles for the Development of Reliability Standards

NERC shall develop reliability standards in accordance with the NERC *Reliability Standards Development Procedure*, which is incorporated into these rules as **Appendix 3A**. Appeals in connection with the development of a reliability standard shall also be conducted in accordance with the NERC *Reliability Standards Development Procedure*. Any amendments or revisions to the *Reliability Standards Development Procedure* shall be consistent with the following essential principles:

1. **Openness** — Participation shall be open to all persons who are directly and materially affected by the reliability of the North American bulk power system. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in NERC or any other organization, and shall

not be unreasonably restricted on the basis of technical qualifications or other such requirements.

2. **Transparency** — The process shall be transparent to the public.
3. **Consensus-building** — The process shall build and document consensus for each standard, both with regard to the need and justification for the standard and the content of the standard.
4. **Fair Balance of Interests** — The process shall fairly balance interests of all stakeholders and shall not be dominated by any single interest category.
5. **Due Process** — Development of standards shall provide reasonable notice and opportunity for any person with a direct and material interest to express views on a proposed standard and the basis for those views, and to have that position considered in the development of the standards.
6. **Timeliness** — Development of standards shall be timely and responsive to new and changing priorities for reliability of the bulk power system.

305. Registered Ballot Body

NERC reliability standards shall be approved by a registered ballot body prior to submittal to the board and then to ERO governmental authorities for their approval, where authorized by applicable legislation or agreement. This Section 305 sets forth the rules pertaining to the composition of, and eligibility to participate in, the registered ballot body.

1. **Eligibility to Vote on Standards** — Any person or entity may join the registered ballot body to vote on standards, whether or not such person or entity is a member of NERC.
2. **Inclusive Participation** — The segment qualification guidelines are inclusive; i.e., any entity with a legitimate interest in the reliability of the bulk power system that can meet any one of the eligibility criteria for a segment is entitled to belong to and vote in each segment for which it qualifies, subject to limitations defined in Sections 305.3 and 305.5.
3. **General Criteria for Registered Ballot Body Membership** — The general criteria for membership in the segments are:
 - 3.1 **Multiple Segments** — A corporation or other organization with integrated operations or with affiliates that qualifies to belong to more than one segment (e.g., transmission owners and load serving entities) may join once in each segment for which it qualifies, provided that each segment constitutes a separate membership and the organization is represented in each segment by a different representative. Affiliated entities are collectively limited to one membership in each segment for which they are qualified.

- 3.2 **Withdrawing from a Segment or Changing Segments** — After its initial registration in a segment, each registered participant may elect to withdraw from a segment or apply to change segments at any time.
- 3.3 **Review of Segment Criteria** — The board shall review the qualification guidelines and rules for joining segments at least every three years to ensure that the process continues to be fair, open, balanced, and inclusive. Public input will be solicited in the review of these guidelines.
4. **Proxies for Voting on Standards** — Any registered participant may designate an agent or proxy to vote on its behalf. There are no limits on how many proxies an agent may hold. However, for the proxy to be valid, NERC must have in its possession written documentation signed by the representative of the registered participant that the voting right by proxy has been transferred from the registered participant to the agent.
5. **Stakeholder Segments** — The specific criteria for membership in each registered ballot body segment are defined in the *Reliability Standards Development Procedure* in **Appendix 3A**.
6. **Review of Stakeholder Segment Entries**
NERC shall review all applications for joining the registered ballot body, and shall make a determination of whether the applicant's self-selection of a segment satisfies at least one of the guidelines to belong to that segment. The entity shall then become eligible to participate as a voting member of that segment. The Standards Committee shall resolve disputes regarding eligibility for membership in a segment, with the applicant having the right of appeal to the board.

306. Standards Committee

The Standards Committee shall provide oversight of the reliability standards development process to ensure stakeholder interests are fairly represented. The Standards Committee shall not under any circumstance change the substance of a draft or approved standard.

1. **Membership** — The Standards Committee is a representative committee comprising representatives of two members of each of the segments in the registered ballot body.
2. **Elections** — Standards Committee members are elected for staggered (one per segment per year) two-year terms by the respective stakeholder segments in accordance with the *Procedure for the Election of Members of the NERC Standards Committee*, which is incorporated into these rules as **Appendix 2**. Segments may use their own election procedure if such a procedure is ratified by two-thirds of the members of a segment and approved by the board.
3. **Canadian Representation**
 - 3.1 **Provision for Sufficient Canadian Representation** — If any regular election of Standards Committee members does not result in at least two

Canadian members on the Standards Committee, the Canadian nominees who were not elected but who received the next highest percentage of votes within their respective segment(s) will be designated as additional members of the Standards Committee, as needed to achieve a total of two Canadian members.

- 3.2 **Terms of Specially Designated Canadian Members** — Each specially designated Canadian member of the Standards Committee shall have a term ending with the next annual election.
- 3.3 **Segment Preference** — If any segment has an unfilled representative position on the Standards Committee following the annual election, the first preference is to assign each specially designated Canadian representative to a segment with an unfilled representative position for which his or her organization qualifies.
- 3.4 **Rights of Specially Designated Canadian Members** — Any specially designated Canadian members of the Standards Committee shall have the same rights and obligations as all other members of the Standards Committee.
4. **Open Meetings** — All meetings of the Standards Committee shall be open and publicly noticed on the NERC Web site.

307. Standards Process Manager

NERC shall assign a standards process manager to administer the development of reliability standards. The standards process manager shall be responsible for ensuring that the development and revision of standards are in accordance with the NERC *Reliability Standards Development Procedure*. The standards process manager shall work to achieve the highest degree of integrity and consistency of quality and completeness of the reliability standards. The standards process manager shall coordinate with any regional entities that develop regional reliability standards to ensure those standards are effectively integrated with the NERC reliability standards.

308. Steps in the Development of Reliability Standards

1. **Procedure** — NERC shall develop reliability standards through the process set forth in the NERC *Reliability Standards Development Procedure* (**Appendix 3A**). The procedure includes a provision for approval of urgent action standards that can be completed within 60 days and emergency actions that may be further expedited.
2. **Board Approval** — Reliability standards or revisions to reliability standards approved by the ballot pool in accordance with the *Reliability Standards Development Procedure* shall be submitted for approval by the board. No reliability standard or revision to a reliability standard shall be effective unless approved by the board.

3. **Governmental Approval** — After receiving board approval, a reliability standard or revision to a reliability standard shall be submitted to all applicable ERO governmental authorities in accordance with Section 309. No reliability standard or revision to a reliability standard shall be effective within a geographic area over which an ERO governmental authority has jurisdiction unless approved by such ERO governmental authority or is otherwise made effective pursuant to the laws applicable to such ERO governmental authority.

309. Filing of Reliability Standards for Approval by ERO Governmental Authorities

1. **Filing of Reliability Standards for Approval** — Where authorized by applicable legislation or agreement, NERC shall file with the applicable ERO governmental authorities each reliability standard, modification to a reliability standard, or withdrawal of a standard that is approved by the board. Each filing shall be in the format required by the ERO governmental authority and shall include: a concise statement of the basis and purpose of the standard; the text of the standard; the implementation plan for the reliability standard; a demonstration that the standard meets the essential attributes of reliability standards as stated in Section 302; the drafting team roster; the ballot pool and final ballot results; and a discussion of public comments received during the development of the reliability standard and the consideration of those comments.
2. **Remanded Reliability Standards and Directives to Develop Standards** — If an ERO governmental authority remands a reliability standard to NERC or directs NERC to develop a reliability standard, NERC shall within five (5) business days notify all other applicable ERO governmental authorities, and shall within thirty (30) calendar days report to all ERO governmental authorities a plan and timetable for modification or development of the reliability standard. Standards that are remanded or directed by an ERO governmental authority shall be modified or developed using the *Reliability Standards Development Procedure*. NERC shall, during the development of a modification for the remanded standard or directed standard, consult with other ERO governmental authorities to coordinate any impacts of the proposed standards in those other jurisdictions. The urgent approval action procedure may be applied if necessary to meet a timetable for action required by the ERO governmental authorities, respecting to the extent possible the provisions in the standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interest in developing reliability standards.
3. **Directives to Develop Standards under Extraordinary Circumstances** — An ERO governmental authority may, on its own initiative, determine that extraordinary circumstances exist requiring expedited development of a reliability standard. In such a case, the applicable agency may direct the development of a standard within a certain deadline. NERC staff shall prepare the standards authorization request and seek a stakeholder sponsor for the request. If NERC is unable to find a sponsor for the proposed standard, NERC will be designated as the requestor. The proposed standard will then proceed through the standards development process, using the urgent and emergency action procedures

described in the *Reliability Standards Development Procedure* as necessary to meet the specified deadline. The timeline will be developed to respect, to the extent possible, the provisions in the standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in developing reliability standards.

- 3.1 Consistent with all reliability standards developed under the urgent or emergency action process, each of the three possible follow-up actions as documented in the *Reliability Standards Development Procedure* are to be completed through the standards development process and are subject to approval by the ERO governmental authorities in the U.S. and Canada.

310. Reliability Standards Annual Work Plan

NERC shall develop and provide an annual work plan for development of reliability standards to the applicable ERO governmental authorities. NERC shall consider the comments and priorities of the ERO governmental authorities in developing and updating the work plan. Each annual work plan shall include a progress report comparing results achieved to the prior year's plan.

311. Regional Entity Standards Development Procedures

1. **NERC Approval of Regional Entity Reliability Standards Development Procedure** — To enable a regional entity to develop regional reliability standards that are to be recognized and made part of NERC reliability standards, a regional entity may request NERC to approve a regional entity reliability standards development procedure.
2. **Public Notice and Comment on Regional Reliability Standards Development Procedure** — Upon receipt of such a request, NERC shall publicly notice and request comment on the proposed regional standards development procedure, allowing a minimum of 45 days for comment. The regional entity shall have an opportunity to resolve any objections identified in the comments and may choose to withdraw the request, revise the procedure and request another posting for comment, or submit the procedure, along with its consideration of any objections received, for approval by NERC.
3. **Evaluation of Regional Reliability Standards Development Procedure** — NERC shall evaluate whether a regional reliability standards development procedure meets the criteria listed below and shall consider stakeholder comments, any unresolved stakeholder objections, and the consideration of comments provided by the regional entity, in making that determination. If NERC determines the regional reliability standards development procedure meets these requirements, the procedure shall be submitted to the board for approval. The board shall consider the recommended action, stakeholder comments, any unresolved stakeholder comments, and the regional entity consideration of comments in determining whether to approve the regional reliability standards development procedure.

- 3.1 **Evaluation Criteria** — The regional reliability standards development procedure shall be:
- 3.1.1 **Open** — The regional reliability standards development procedure shall provide that any person or entity who is directly and materially affected by the reliability of the bulk power systems within the regional entity shall be able to participate in the development and approval of reliability standards. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in the regional entity, a regional entity or any organization, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements.
 - 3.1.2 **Inclusive** — The regional reliability standards development procedure shall provide that any person with a direct and material interest has a right to participate by expressing an opinion and its basis, having that position considered, and appealing through an established appeals process if adversely affected.
 - 3.1.3 **Balanced** — The regional reliability standards development procedure shall have a balance of interests and shall not permit any two interest categories to control the vote on a matter or any single interest category to defeat a matter.
 - 3.1.4 **Due Process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.
 - 3.1.5 **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.
 - 3.1.6 **Accreditation of Regional Standards Development Procedure** — A regional entity's reliability standards development procedure that is accredited by the American National Standards Institute or the Standards Council of Canada shall be deemed to meet the criteria listed in this Section 311.3.1, although such accreditation is not a prerequisite for approval by NERC.
 - 3.1.7 **Use of NERC Procedure** — A regional entity may adopt the *NERC Reliability Standards Development Procedure* as the regional reliability standards development procedure, in which

case the regional entity's procedure shall be deemed to meet the criteria listed in this Section 311.3.1.

4. **Revisions of Regional Reliability Standards Development Procedures** — Any revision to a regional reliability standards development procedure shall be subject to the same approval requirements set forth in Sections 311.1 through 311.3.
5. **Duration of Regional Reliability Standards Development Procedures** — The regional reliability standards development procedure shall remain in effect until such time as it is replaced with a new version approved by NERC or it is withdrawn by the regional entity. The regional entity may, at its discretion, withdraw its regional reliability standards development procedure at any time.

312. Regional Reliability Standards

1. **Basis for Regional Reliability Standards** — Regional entities may propose regional reliability standards that set more stringent reliability requirements than the NERC reliability standard or cover matters not covered by an existing NERC reliability standard. Such regional reliability standards shall in all cases be approved by NERC and made part of the NERC reliability standards and shall be enforceable in accordance with the delegation agreement between NERC and the regional entity or other instrument granting authority over enforcement to the regional entity. No entities other than NERC and the regional entity shall be permitted to develop regional reliability standards that are enforceable under statutory authority delegated to NERC and the regional entity.
2. **Regional Reliability Standards That are Directed by a NERC Reliability Standard** — Although it is the intent of NERC to promote uniform reliability standards across North America, in some cases it may not be feasible to achieve a reliability objective with a reliability standard that is uniformly applicable across North America. In such cases, NERC may direct regional entities to develop regional reliability standards necessary to implement a NERC reliability standard. Such regional reliability standards that are developed pursuant to a direction by NERC shall be made part of the NERC reliability standards.
3. **Procedure for Developing an Interconnection-wide Regional Standard** — A regional entity organized on an interconnection-wide basis may propose a regional reliability standard for approval as a NERC reliability standard to be made mandatory for all applicable bulk power system owners, operators, and users within that interconnection.
 - 3.1 **Presumption of Validity** — An interconnection-wide regional reliability standard that is determined by NERC to be just, reasonable, and not unduly discriminatory or preferential, and in the public interest, and consistent with such other applicable standards of governmental authorities, shall be adopted as a NERC reliability standard. NERC shall rebuttably presume that a regional reliability standard developed, in accordance with a regional reliability standards development process approved by NERC, by a regional entity organized on an interconnection-

wide basis, is just, reasonable, and not unduly discriminatory or preferential, and in the public interest, and consistent with such other applicable standards of governmental authorities.

- 3.2 **Notice and Comment Procedure for Interconnection-wide Regional Reliability Standard** — NERC shall publicly notice and request comment on the proposed interconnection-wide regional reliability standard, allowing a minimum of 45 days for comment. NERC may publicly notice and post for comment the proposed regional reliability standard concurrent with similar steps in the regional entity's reliability standards development process. The regional entity shall have an opportunity to resolve any objections identified in the comments and may choose to comment on or withdraw the request, revise the proposed regional reliability standard and request another posting for comment, or submit the proposed regional reliability standard along with its consideration of any objections received, for approval by NERC.
- 3.3 **Approval of Interconnection-wide Regional Reliability Standard by NERC** — NERC shall evaluate and recommend whether a proposed interconnection-wide regional reliability standard has been developed in accordance with all applicable procedural requirements and whether the regional entity has considered and resolved stakeholder objections that could serve as a basis for rebutting the presumption of validity of the regional reliability standard. The regional entity, having been notified of the results of the evaluation and recommendation concerning NERC proposed regional reliability standard, shall have the option of presenting the proposed regional reliability standard to the board for approval as a NERC reliability standard. The board shall consider the regional entity's request, NERC's recommendation for action on the regional reliability standard, any unresolved stakeholder comments, and the regional entity's consideration of comments, in determining whether to approve the regional reliability standard as a NERC reliability standard.
- 3.4 **ERO Governmental Authority Approval** — An interconnection-wide regional reliability standard that has been approved by the board shall be filed with the applicable ERO governmental authorities for approval, where authorized by applicable legislation or agreement, and shall become effective when approved by such ERO governmental authorities or on a date set by the ERO governmental authorities.
- 3.5 **Enforcement of Interconnection-wide Regional Reliability Standard** — An interconnection-wide regional reliability standard that has been approved by the board and by the applicable ERO governmental authorities or is otherwise made effective within Canada as mandatory within a particular region shall be applicable and enforced as a NERC reliability standard within the region.

4. **Procedure for Developing Non-Interconnection-Wide Regional Reliability Standards**

Regional entities that are not organized on an interconnection-wide basis may propose regional reliability standards to apply within their respective regions. Such standards may be developed through the NERC reliability standards development procedure, or alternatively, through a regional reliability standards development procedure that has been approved by NERC.

4.1 **No Presumption of Validity** — Regional reliability standards that are not proposed to be applied on an interconnection-wide basis are not presumed to be valid but may be demonstrated by the proponent to be valid.

4.2 **Notice and Comment Procedure for Non-Interconnection-wide Regional Reliability Standards** — NERC shall publicly notice and request comment on the proposed regional reliability standard, allowing a minimum of 45 days for comment. NERC may publicly notice and post for comment the proposed regional reliability standard concurrent with similar steps in the regional entity's reliability standards development process. The regional entity shall have an opportunity to comment on or resolve any objections identified in the comments and may choose to withdraw the request, revise the proposed regional reliability standard and request another posting for comment, or submit the proposed regional reliability standard along with its consideration of any objections received, for approval by NERC.

4.3 **NERC Approval of Non-Interconnection-wide Regional Reliability Standards** — NERC shall evaluate and recommend whether a proposed non-Interconnection-wide regional reliability standard has been developed in accordance with all applicable procedural requirements and whether the regional entity has considered and resolved stakeholder objections. The regional entity, having been notified of the results of the evaluation and recommendation concerning proposed regional reliability standard, shall have the option of presenting the proposed regional reliability standard to the board for approval as a NERC reliability standard. The board shall consider the regional entity's request, the recommendation for action on the regional reliability standard, any unresolved stakeholder comments, and the regional entity's consideration of comments, in determining whether to approve the regional reliability standard as a NERC reliability standard.

4.4 **NERC Governmental Authority Approval** — A non-Interconnection-wide regional reliability standard that has been approved by the board shall be filed with the applicable ERO governmental authorities for approval, where authorized by applicable legislation or agreement, and shall become effective when approved by such ERO governmental authorities or on a date set by the ERO governmental authorities.

- 4.5 **Enforcement of Non-Interconnection-wide Regional Reliability Standards** — A non-Interconnection-wide regional reliability standard that has been approved by the board and by the applicable ERO governmental authorities or is otherwise made effective within Canada as mandatory within a particular region shall be applicable and enforced as a NERC reliability standard within the region.

5. **Appeals**

A Regional Entity shall have the right to appeal NERC's decision not to approve a proposed regional reliability standard or variance to the Commission or other applicable governmental authority.

313. Other Regional Criteria, Guides, Procedures, Agreements, Etc.

1. **Regional Criteria** — Regional entities may develop regional criteria that are necessary to implement, to augment, or to comply with reliability standards, but which are not reliability standards. Regional criteria may also address issues not within the scope of reliability standards, such as resource adequacy. Regional criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents used to enhance the reliability of the regional bulk power system. These documents typically provide benefits by promoting more consistent implementation of the NERC reliability standards within the region. These documents are not NERC reliability standards, regional reliability standards, or regional variances, and therefore are not enforceable under authority delegated by NERC pursuant to delegation agreements and do not require NERC approval.
2. **Catalog of Regional Reliability Criteria** — NERC shall maintain a current catalog of regional reliability criteria. Regional reliability organizations and regional entities shall provide a catalog listing of regional reliability criteria to NERC and shall notify NERC of changes to the listing. Regional reliability organizations and regional entities shall provide any listed document to NERC upon written request.

314. Conflicts with Statutes, Regulations, and Orders

Notice of Potential Conflict — If a bulk power system owner, operator, or user determines that a NERC or regional reliability standard may conflict with a function, rule, order, tariff, rate schedule, legislative requirement or agreement that has been accepted, approved, or ordered by a governmental authority affecting that entity, the entity shall expeditiously notify the governmental authority, NERC, and the relevant regional entity of the conflict.

1. **Determination of Conflict** — NERC, upon request of the governmental authority, may advise the governmental authority regarding the conflict and propose a resolution of the conflict, including revision of the reliability standard if appropriate.

2. **Regulatory Precedence** — Unless otherwise ordered by a governmental authority, the affected bulk power system owner, operator, or user shall continue to follow the function, rule, order, tariff, rate schedule, legislative requirement, or agreement accepted, approved, or ordered by the governmental authority until the governmental authority finds that a conflict exists and orders a remedy and such remedy is affected.

315. Revisions to NERC Reliability Standards Development Procedure

Any person or entity may submit a written request to modify NERC *Reliability Standards Development Procedure*. Consideration of the request and development of the revision shall follow the process defined in the NERC *Reliability Standards Development Procedure*. Upon approval by the board, the revision shall be submitted to the ERO governmental authorities for approval. Changes shall become effective only upon approval by the ERO governmental authorities or on a date designated by the ERO governmental authorities or as otherwise applicable in a particular jurisdiction.

316. Accreditation

NERC shall seek continuing accreditation of the NERC reliability standards development process by the American National Standards Institute and the Standards Council of Canada.

317. Five-Year Review of Standards

NERC shall complete a review of each NERC reliability standard at least once every five years from the effective date of the standard or the latest revision to the standard, whichever is later. The review process shall be conducted in accordance with the NERC *Reliability Standards Development Procedure*. The standards process manager shall be responsible for administration of the five-year review of reliability standards. As a result of this review, the NERC reliability standard shall be reaffirmed, revised, or withdrawn. If the review indicates a need to revise or withdraw the standard, a request for revision or withdrawal shall be prepared, submitted and addressed in accordance with the NERC *Reliability Standards Development Procedure*.

318. Coordination with the North American Energy Standards Board

NERC shall, through a memorandum of understanding, maintain a close working relationship with the North American Energy Standards Board and ISO/RTO Council to ensure effective coordination of wholesale electric business practice standards and market protocols with the NERC reliability standards.

319. Archived Standards Information

NERC shall maintain a historical record of reliability standards information that is no longer maintained on-line. For example, standards that expired or were replaced may be removed from the on-line system. Archived information shall be retained indefinitely as practical, but in no case less than five years or one complete standards review cycle from the date on which the standard was no longer in effect. Archived records of reliability

standards information shall be available electronically within 30 days following the receipt by the standards process manager of a written request.

320. Alternate Method for Adopting Violation Risk Factors

In the event the standards development process fails to produce violation risk factors for a particular standard in a timely manner, the Board of Trustees may adopt violation risk factors for that standard using the procedures set out in Section 1400 of these Rules of Procedure.

SECTION 400 — COMPLIANCE ENFORCEMENT

401. Scope of the NERC Compliance Enforcement Program

1. **Components of the NERC Compliance Enforcement Program** — NERC shall develop and implement a NERC Compliance Monitoring and Enforcement Program to promote the reliability of the bulk power system by enforcing compliance with approved reliability standards in those regions of North American in which NERC and/or a regional entity (pursuant to a delegation agreement with NERC that has been approved by the applicable ERO governmental authority) has been given enforcement authority. There are four distinct parts of the NERC Monitoring and Compliance Enforcement Program: (1) NERC's oversight of the regional entity compliance programs (Section 402), (2) the definition of the required regional entity compliance enforcement program attributes (Section 403), (3) NERC's monitoring of regional entity compliance with reliability standards (Section 404), and (4) the monitoring of compliance with reliability standards that are applicable to NERC (Sections 405–406).
2. **Who Must Comply** — Where required by applicable legislation, regulation or agreement, all bulk power system owners, operators, and users, and in some cases regional reliability organizations, regional entities, and NERC, are required to comply with all approved NERC reliability standards at all times. Regional reliability standards and regional variances approved by NERC and the applicable ERO governmental authority shall be considered NERC reliability standards and shall apply to all bulk power system owners, operators, or users responsible for meeting those standards within the regional entity boundaries, whether or not the bulk power system owner, operator, or user is a member of the regional entity.
3. **Data Access** — All bulk power system owners, operators, and users shall provide to NERC and the applicable regional entity such information as is necessary to monitor compliance with the reliability standards. NERC and the applicable regional entity will define the data retention and reporting requirements in the reliability standards and compliance reporting procedures.
4. **Role of Regional Entities in the Compliance Enforcement Program** — Each regional entity that has been delegated authority through a delegation agreement or other legal instrument approved by the applicable ERO governmental authority shall, in accordance with the terms of the approved delegation agreement, administer a regional entity compliance enforcement program to meet the NERC Compliance Monitoring and Enforcement Program goals and the requirements in this Section 400.
5. **Program Continuity** — NERC will ensure continuity of compliance monitoring and enforcement within the geographic boundaries of a regional entity in the event that NERC does not have a delegation agreement, or the regional entity withdraws from the agreement or does not operate its compliance enforcement program in accordance with the delegation agreement or other applicable requirements.

- 5.1 Should NERC not have a delegation agreement with a regional entity covering a geographic area, or a regional entity withdraws from an existing delegation agreement or the delegation agreement is otherwise terminated, NERC will directly administer the Compliance Monitoring and Enforcement Program applicable to owners, operators and users of the bulk-power system within that geographic area.
 1. This monitoring and enforcement will be accomplished by NERC and compliance staff from another approved regional entity.
 2. If an existing delegation agreement with a regional entity is terminating, the regional entity shall promptly provide to NERC all relevant compliance information regarding registered entities, contacts, prior compliance information and actions, mitigation plans, and remedial actions for the period in which the regional entity was responsible for administering the Compliance Monitoring and Enforcement Program.
 3. NERC will levy and collect all penalties directly and will utilize any penalty monies collected to offset the expenses of administering the compliance monitoring and enforcement program for the geographic area.
- 5.2 Should a regional entity seek to withdraw from its delegation agreement, NERC will seek agreement from another regional entity to amend its delegation agreement with NERC to extend that regional entity's boundaries for compliance monitoring and enforcement. In the event no regional entity is willing to accept this responsibility, NERC will administer the Compliance Monitoring and Enforcement Program within the geographical boundaries of the regional entity seeking to withdraw from the delegation agreement, in accordance with Section 401.5.1.
6. **Actively Monitored Requirements** — NERC, with input from the regional entities, stakeholders, and regulators, shall annually select a subset of the NERC reliability standards and requirements to be actively monitored and audited in the NERC annual compliance program. Compliance is required with all NERC reliability standards whether or not they are included in the subset of reliability standards and requirements designated to be actively monitored and audited in the NERC annual compliance program.
7. **Penalties, Sanctions, and Remedial Actions** — NERC and regional entities will apply penalties, sanctions, and remedial actions that bear a reasonable relation to the seriousness of a violation and take into consideration timely remedial efforts as defined in the NERC *Sanction Guidelines*, which is incorporated into these rules as **Appendix 4B**.
8. **Multiple Enforcement Actions** – A registered entity shall not be subject to an enforcement action by NERC and a regional entity for the same violation.
9. **Records** — NERC shall maintain a record of each compliance submission, including self-reported, confirmed, and alleged violations of approved reliability

standards; associated penalties, sanctions, remedial actions and settlements; and the status of mitigation actions.

402. NERC Oversight of the Regional Entity Compliance Enforcement Programs

1. **NERC Monitoring Program** — NERC shall have a program to monitor the compliance enforcement program of each regional entity that has been delegated authority. The objective of this monitoring program shall be to ensure that the regional entity carries out its compliance enforcement program in accordance with these rules and the terms of the delegation agreement, and to ensure consistency and fairness of the regional entity’s compliance enforcement program. Oversight and monitoring by NERC shall be accomplished through an annual compliance enforcement program review, program audits, and regular evaluations of regional entity compliance enforcement program performance as described below.
 - 1.1 **NERC Review of Regional Compliance Enforcement Program Annual Plans** — NERC shall require each regional entity to submit for review and approval an annual compliance enforcement program implementation plan. NERC shall review each regional entity’s compliance enforcement program annual implementation plan and shall accept the plan if it meets NERC requirements and the requirements of the delegation agreement.
 - 1.2 **Regional Entity Program Evaluation** — NERC shall annually evaluate the goals, tools, and procedures of each regional entity compliance enforcement program to determine the effectiveness of each regional entity program, using criteria developed by the NERC Compliance and Certification Committee.
 - 1.3 **Regional Entity Program Audit** — At least once every three years, NERC shall conduct an audit to evaluate how each regional entity compliance enforcement program implements the NERC Compliance Monitoring and Enforcement Program. The evaluation shall be based on these rules of procedures, the delegation agreement, approved regional entity annual compliance enforcement program annual implementation plans, required program attributes, and the NERC compliance program procedures. These evaluations shall be provided to the appropriate ERO governmental authorities to demonstrate the effectiveness of each regional entity.
 - 1.3.1 NERC shall maintain an audit procedure containing the requirements, steps, and timelines to conduct an audit of each regional entity compliance enforcement program. The current procedure is contained in the NERC Audit of Regional Entity Compliance Programs, which is incorporated into these rules as **Appendix 4A**.
 - 1.3.2 NERC shall establish a program to audit bulk power system owners, operators, and users operating within a regional entity to verify the findings of previous compliance audits conducted by the regional entity to evaluate how well the regional entity compliance

enforcement program is meeting its delegated authority and responsibilities.

- 1.4 ERO governmental authorities will be allowed to participate as an observer in any audit conducted by NERC of a regional entity's compliance monitoring and enforcement program. A representative of the regional entity being audited will be allowed to participate in the audit as an observer.
2. **Consistency Among Regional Compliance Enforcement Programs** — To provide for a consistent compliance enforcement program for all bulk power system owners, operators, and users required to comply with approved reliability standards, NERC shall maintain a single, uniform compliance monitoring and enforcement program. Differences in regional entity program methods, including determination of violations and penalty assessment, shall be justified on a case-by-case basis and fully documented in each regional entity delegation agreement.
 - 2.1 NERC shall ensure that each of the regional entity compliance enforcement programs meets these Rules of Procedure and follows the terms of the delegation agreement and the approved regional entity compliance enforcement program annual plan.
 - 2.2 NERC shall develop a single, uniform compliance monitoring and enforcement program containing the procedures to ensure the consistency and fairness of the processes used to determine regional entity compliance enforcement program findings of compliance and noncompliance, and the application of penalties and sanctions.
 - 2.3 NERC shall periodically conduct regional entity compliance manager forums. These forums shall use the results of regional entity compliance program audits and findings of NERC compliance staff to identify and refine regional entity compliance program differences into a set of best practices over time.
3. **Information Collection and Reporting** — NERC and the regional entities shall implement data management procedures that address data reporting requirements, data integrity, data retention, data security, and data confidentiality.
4. **Violation Disclosure** — NERC shall disclose all confirmed violations and maintain as confidential alleged violations, according to the reporting and disclosure process in Section 408.
5. **Authority to Determine Noncompliance, Levy Penalties and Sanctions, and Issue Remedial Action Directives** — NERC and regional entity compliance staff shall have the authority and responsibility to make initial determinations of compliance or noncompliance, and where authorized by the appropriate governmental authorities or where otherwise authorized, to determine penalties and sanctions for noncompliance with a reliability standard, and issue remedial

action directives. Regional entity boards or a compliance panel reporting directly to the regional entity board will be vested with the authority for the overall regional entity compliance program and have the authority to impose penalties and sanctions on behalf of NERC, where authorized by applicable legislation or agreement. Remedial action directives may be issued by NERC or a regional entity that is aware of a bulk power system owner, operator, or user that is about to engage in an act or practice that would result in noncompliance. If, after receiving such a directive, the bulk power system owner, operator, or user does not take appropriate action to avert a violation of a reliability standard, NERC may petition the applicable ERO governmental authority to issue a compliance order.

6. **Due Process** — NERC shall establish and maintain a fair, independent, and nondiscriminatory appeals process. The appeals process is set forth in Sections 409–411. The process shall allow bulk power system owners, operators, and users to appeal the regional entity’s findings of noncompliance and to appeal penalties, sanctions, and remedial actions that are levied by the regional entity. Appeals beyond the NERC process will be heard by the applicable governmental authority.

The appeals process will also allow for appeals to NERC of any findings of noncompliance issued by NERC to a regional reliability organization for standards and requirements where the regional reliability organization is monitored for compliance to a reliability standard. No monetary penalties will be levied in these matters; however sanctions, remedial actions, and directives to comply may be applied by NERC.

7. **Conflict Disclosure** — NERC shall disclose to the appropriate governmental authorities any potential conflicts between a market rule and the enforcement of a regional reliability standard.
8. **Confidentiality** — To maintain the integrity of the NERC Compliance Monitoring and Enforcement Program, NERC and regional entity staff, audit team members, and committee members shall maintain the confidentiality of information shared during investigations, audits, drafting of reports, appeals, and closed meetings.
 - 8.1 NERC and the regional entity shall have in place appropriate codes of conduct and confidentiality agreements for staff and other compliance enforcement program participants.
 - 8.2 Individuals not bound by NERC or regional entity codes of conduct who serve on compliance-related committees or audit teams shall sign a NERC confidentiality agreement prior to participating on the committee or team.
 - 8.3 Information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information shall

not be distributed outside of a committee or team, nor released publicly. Other information subject to confidentiality is identified in Section 1500.

8.4 In the event that a staff, committee, or audit team member violates any of the confidentiality rules set forth above, the staff, committee, or audit team member and any member organization with which the individual is associated may be subject to appropriate action by the regional entity or NERC, including prohibiting participation in future compliance enforcement activities.

9. **Auditor Training** — NERC shall develop and provide training in auditing skills to all people who participate in NERC and regional entity compliance enforcement audits. Training for NERC and regional entity personnel and others who serve as compliance audit team leaders shall be more comprehensive than training given to industry experts, regional entity members, and volunteers. Training for regional entity members and volunteers may be delegated to the regional entity.

403. Required Attributes of Regional Entity Compliance Enforcement Programs

Each regional entity compliance enforcement program shall promote excellence in the enforcement of reliability standards. To accomplish this goal, each regional entity compliance enforcement program shall at a minimum meet all of the following attributes.

Program Structure

1. **Independence** — Each regional entity's governance of its compliance enforcement program shall exhibit independence, meaning the compliance enforcement program shall be organized so that its compliance monitoring and enforcement activities are carried out separately from other activities of the regional entity. The program shall not be unduly influenced by the bulk power system owners, operators, and users being monitored or other regional entity or regional reliability organization activities that are required to meet the reliability standards. Regional entities must include rules providing that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.
2. **Exercising Authority** — Each regional entity compliance enforcement program shall exercise the responsibility and authority in carrying out the delegated functions of the NERC Compliance Monitoring and Enforcement Program in accordance with delegation agreements. These functions include but are not limited to: data gathering, data reporting, compliance violation investigations, compliance auditing activities, evaluating compliance and noncompliance, imposing penalties and sanctions, and approving and tracking mitigation actions.
3. **Delegation of Authority** — To maintain independence, fairness, and consistency in the NERC Compliance Monitoring and Enforcement Program, a regional entity shall not sub-delegate its compliance enforcement program duties to entities or persons other than the regional entity compliance enforcement program staff, unless required by statute or regulation in the applicable jurisdiction.

4. **Hearings of Contested Findings or Sanctions** — The regional entity board or compliance panel reporting directly to the regional entity board (with appropriate recusal procedures) will be vested with the authority for conducting compliance hearings in which any bulk power system owner, operator, or user provided notice of an alleged violation may present facts and other information to contest a notice of alleged violation or any proposed penalty, sanction, or remedial action. Compliance hearings shall be conducted in accordance with the Hearing Process set forth in Attachment 2 to the NERC Compliance Monitoring and Enforcement Program document. If a stakeholder body serves as the hearing body, no two industry sectors may control any decision and no single segment may veto any matter related to compliance after recusals.

Program Resources

5. **Regional Entity Compliance Staff** — Each regional entity shall have sufficient resources to meet delegated compliance enforcement responsibilities, including the necessary professional staff to manage and implement the regional entity compliance enforcement program.
6. **Regional Entity Compliance Staff Independence** — The regional entity compliance enforcement program staff shall be capable of and required to make all initial determinations of compliance and noncompliance and determine penalties, sanctions, and remedial actions.
 - 6.1 Regional entity compliance enforcement program staff shall not have a conflict of interest, real or perceived, in the outcome of compliance violation investigations, compliance audits, reports, or sanctions. The regional entity shall have in effect a conflict of interest policy.
 - 6.2 Regional entity compliance enforcement program staff shall have the authority and responsibility to investigate, audit (with the input of industry experts or regional members), make initial determinations of compliance or noncompliance, and levy penalties and sanctions without interference or undue influence from regional entity members and their representative or other industry entities.
 - 6.3 Regional entity compliance enforcement program staff may call upon independent technical experts who have no conflict of interest in the outcome of the compliance violation investigation or compliance audit to provide technical advice or recommendations in the determination of compliance or noncompliance in compliance audits, compliance violation investigations, or review of self-reported violations.
 - 6.4 Regional entity compliance enforcement program staff shall abide by the confidentiality requirements contained in Section 1500 of these Rules of Procedure, the NERC delegation agreement and other confidentiality agreements required by the NERC Compliance Monitoring and Enforcement Program.
 - 6.5 Contracting with independent consultants or others working for the regional entity compliance enforcement program shall be permitted

provided the individual has not received compensation from a bulk power system owner, operator, or user being monitored for a period of at least the preceding six months and owns no financial interest in any bulk power system owner, operator, or user being monitored for compliance to the reliability standard, regardless of where the bulk power system owner, operator, or user operates. Any such individuals for the purpose of these rules shall be considered as augmenting regional entity compliance staff.

7. Use of Industry Experts and Regional Entity Members — Industry experts and regional entity members may be called upon to provide their technical expertise in compliance violation investigations, compliance audits, and other compliance activities.

- 7.1 The regional entity shall have procedures defining the allowable involvement of industry experts and regional entity members. The procedures shall address applicable antitrust laws and conflicts of interest.
- 7.2 Industry experts and regional entity members shall have no conflict of interest or financial interests in the outcome of their activities.
- 7.3 Regional entity members and volunteers, as part of teams or regional entity committees, may provide input to the regional entity compliance staff so long as the authority and responsibility for (i) initially evaluating compliance or noncompliance and (ii) levying penalties, sanctions, or remedial actions shall not be delegated to any person or entity other than the compliance staff of the regional entity. Industry experts, regional entity or regional reliability organization members, or regional entity or regional reliability organization committees shall not make initial determinations of noncompliance or levy penalties, sanctions, or remedial actions. Any committee involved shall be organized so that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.
- 7.4 Industry experts, regional entity, and regional reliability organization members shall sign a confidentiality agreement appropriate for the activity being performed.
- 7.5 All industry experts and regional entity members participating in compliance audits and compliance violation investigations shall successfully complete auditor training provided by NERC or the regional entity prior to performing these activities

Program Design

8. **Regional Entity Compliance Enforcement Program Content** — All approved reliability standards shall be included in the regional entity compliance enforcement program for all bulk power system owners, operators, and users within the defined boundaries of the regional entity. Compliance to approved regional entity reliability standards is applicable only within the footprint of the regional entity that submitted those particular regional entity reliability standards for approval. NERC will identify the minimum set of reliability standards and requirements to be actively monitored by the regional entity in a given year.
9. **Antitrust Provisions** — Each regional entity's compliance enforcement program shall be structured and administered to abide by U.S. antitrust law and Canadian competition law.
10. **Information Submittal** — All bulk power system owners, operators, and users within the regional entity responsible for complying with reliability standards shall submit timely and accurate information when requested by the regional entity or NERC, in accordance with established procedures of NERC and the regional entity. NERC and the regional entities shall preserve any mark of confidentiality on information submitted pursuant to Section 1502.1.
 - 10.1 Each regional entity has the authority to collect the necessary information to determine compliance and shall develop processes for gathering data from the bulk power system owners, operators, and users they monitor.
 - 10.2 When requested, the regional entities shall report information to NERC promptly and in accordance with NERC procedures.
 - 10.3 Regional entities shall notify NERC of all violations of NERC reliability standards by entities over which the regional entity has enforcement authority or enforcement responsibilities, whether self-reported, alleged, or confirmed, in accordance with the *Reporting and Disclosure Process* in Section 408.
 - 10.4 A bulk power system owner, operator, or user found in noncompliance with a reliability standard shall submit a mitigation plan with a timeline addressing how the noncompliance will be corrected. The regional entity compliance staff shall review and approve the mitigation plan. Regional entity compliance staff may issue remedial action directives to owners, operators and users of the bulk-power system to comply with reliability standards, as needed to preserve the reliability of the bulk power system.
 - 10.5 An officer of a bulk power system owner, operator, or user shall certify as accurate all compliance data self-reported to the regional entity compliance enforcement program.

- 10.6 Regional entities shall develop and implement procedures to spot-check and verify the compliance information submitted by bulk power system owners, operators, and users.
11. **Compliance Audits of Bulk Power System Owners, Operators, and Users** — Each regional entity will maintain a program of proactive compliance audits. The regional entity shall audit each bulk power system owner, operator, or user responsible for complying with reliability standards. A compliance audit is a process in which a detailed review of the activities of a bulk power system owner, operator, or user is performed to determine if that bulk power system owner, operator, or user is complying with approved reliability standards.
- 11.1 For those bulk power system owners and operators with primary reliability responsibility (i.e., entities requiring organizational certification), the compliance audit will be performed at least once every three years. For other bulk power system owners, operators, and users on the NERC Compliance Registry, compliance audits shall be performed on a schedule established by NERC.
- 11.2 Audits of bulk power system owners and operators with primary reliability responsibility will be performed on the audited entity's site. For other bulk power system owners, operators, and users on the NERC Compliance Registry, the audit may be either an on-site audit or based on review of documents, as determined to be necessary and appropriate by NERC or regional entity compliance program, staff.
- 11.3 Compliance audits must include a detailed review of the activities of the bulk power system owner, operator, or user to determine if the bulk power system owner, operator, or user is complying with all approved reliability standards identified for audit by NERC. The compliance audit shall include a review of supporting documentation and evidence used by the bulk power system owner, operator or user for self-certification compliance reporting for an appropriate reporting period since the last compliance audit.
- 11.4 NERC compliance staff may participate on any regional entity audit team, at any time at NERC's discretion. Additionally, any applicable ERO governmental authority may participate on an audit team as an observer in any regional entity audit within its jurisdiction, at the ERO governmental authority's discretion.
12. **Compliance Audit Results** — The regional entity shall make an evaluation of a bulk power system owner's, operator's, or user's compliance based on the information obtained from a compliance audit and previously reported compliance information. After due process is complete, this evaluation (excluding any critical energy infrastructure information or other confidential

information) shall be made public. The regional entity shall send the report to NERC for public posting.

13. **Compliance Violation Investigations** — Compliance violation investigations are necessary to determine if a violation of reliability standards has occurred when certain system events occur, or when other owners, operators, or users of the bulk power system file complaints. NERC is ultimately responsible for how a regional entity conducts compliance violation investigations. Compliance violation investigations are initiated at the discretion of the regional entity compliance enforcement program staff, the senior executive officer of the regional entity, NERC compliance staff, or the NERC president. The regional entity shall respond to any complaints filed by one entity against another that allege a violation of reliability standards by a bulk power system owner, operator, or user. The regional entity may ask NERC to assist with the compliance violation investigation. Situations that can trigger a compliance violation investigation include but are not limited to (i) significant problems arising on the system, (ii) chronic noncompliance violations, (iii) bulk power system owners, operators, and users not submitting data in a timely or accurate manner, (iv) probable violations identified during readiness evaluations, (v) spot-checks to verify submitted data, (vi) filing of a compliance complaint with the regional entity or NERC, or (vii) Nuclear Regulatory Commission-defined incidents occurring on the transmission system.
14. **Confidentiality of Compliance Audits and Compliance Violation Investigations** — All compliance violation investigations are to be non-public unless NERC, the regional entity or FERC or another applicable governmental authority with jurisdiction determines a need to conduct a public investigation. Advance authorization from the applicable ERO governmental authority is required to make public any compliance violation investigation, compliance audit, or any information relating to a compliance violation investigation or compliance audit, or to permit interventions when determining whether to impose a penalty. This prohibition on making public any compliance violation investigation or compliance audit does not prohibit NERC or a regional entity from publicly disclosing the initiation of or results from an analysis of a significant system event under Section 807 or of off-normal events or system performance under Section 808, so long as specific allegations or conclusions regarding alleged violations of reliability standards are not included in such disclosures.
15. **Report all Violations** — Each regional entity compliance enforcement program shall report to NERC all violations whether self-reported, alleged, or discovered by the region through a compliance audit or compliance violation investigation of all approved reliability standards in accordance with the *Reporting and Disclosure Process* in Section 408. The regional entity will promptly notify NERC of any change in the status of a violation and provide updates at least monthly regarding the status of any compliance audits, compliance violation investigations, or hearings.

16. **Critical Energy Infrastructure Information** — Information that would jeopardize bulk power system reliability, including information relating to a Cyber Security Incident will be identified and protected from public disclosure as critical energy infrastructure information. In accordance with Section 1500, information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information shall be redacted according to NERC procedures and shall not be released publicly.
17. **Penalties, Sanctions, and Remedial Actions** — Each regional entity will apply all penalties, sanctions, and remedial actions directives in accordance with the approved *ERO Sanction Guidelines*. Any changes to the *ERO Sanction Guidelines* to be used by any regional entity must be approved by NERC and submitted to the appropriate ERO governmental body for approval. All confirmed violations, penalties, and sanctions will be provided to NERC for review and filing with applicable ERO governmental authorities as a notice of penalty.
18. **Mitigation of Violations** — Each regional entity compliance enforcement program will require that any bulk power system owner, operator, or user found to be in noncompliance with a reliability standard requirement shall submit a mitigation plan with a timeline addressing how the noncompliance will be corrected. The mitigation plan shall be reviewed and approved by the regional entity compliance staff and the regional entity's compliance panel or board as appropriate.
19. **Settlement Processes** — The regional entity may enter into a settlement process with owners, operators and users of the bulk power system for alleged violations of a reliability standard and any associated financial penalty, sanction, or mitigation actions. NERC must be notified of all settlement proceedings and may participate in any settlement processes. Regional entities may consider all relevant facts in the settlement. Any settlement must ensure that the reliability of the bulk power system will not be compromised by the settlement and that a violation of reliability standards will not occur as a result of the settlement. All settlements must be reported to NERC, which will in turn report the settlement of an alleged violation to the Federal Energy Regulatory Commission or the applicable ERO governmental authority. NERC shall publicly post each violation (whether confirmed or not) that is settled, and the resulting penalty or sanction.
20. **Regional Hearing Process** — Each regional entity compliance enforcement program shall establish and maintain a fair, independent, and nondiscriminatory process for hearing contested violations and any penalties or sanctions levied where authorized by applicable legislation or agreement. The hearing process shall allow bulk power system owners, operators, and users to contest both findings of compliance violations and any penalties and sanctions that are proposed to be levied. The regional entity hearing process shall be conducted before the regional entity board or a balanced committee established by and reporting to the regional entity board as the final adjudicator, provided, that (i) in

ERCOT, the Public Utility Commission of Texas may act as the final adjudicator, and (ii) Canadian provincial regulators may act as the final adjudicator in their respective jurisdictions. The regional entity hearing process shall (i) include provisions for recusal of any members of the hearing body with a potential conflict of interest, real or perceived, from all compliance matters considered by the hearing body for which the potential conflict of interest exists and (ii) provide that no two industry sectors may control any decision and no single segment may veto any matter brought before the hearing body after recusals.

Each regional entity will notify NERC of all hearings and NERC may observe any of the proceedings. Each regional entity will notify NERC of the outcome of all hearings.

If a bulk power system owner, operator, or user has completed the regional entity hearing process and desires to appeal the outcome of the hearing, the bulk power system owner, operator, or user shall appeal to NERC, except that a determination of violation or penalty that has been directly adjudicated by an ERO governmental authority shall be appealed with that ERO governmental authority.

21. **Annual Regional Entity Compliance Enforcement Program Implementation Plan** — Each regional entity shall annually develop and submit to NERC for approval a regional entity compliance enforcement implementation plan that identifies the reliability standards and requirements to be actively monitored (both those required by NERC and any additional reliability standards the regional entity proposes to monitor), and how each NERC and regional entity identified standard will be monitored, evaluated, reported, sanctioned, and appealed. These implementation plans will be submitted to NERC on the schedule established by NERC, generally on or about November 1 of the preceding year.

21.1 In conjunction with the annual implementation plan, each regional entity with delegated authority must report to NERC regarding how it carried out its delegated enforcement authority in the previous year, the effectiveness of the program, and changes expected to correct any deficiencies identified. Each region will provide its annual report on the schedule established by NERC, generally on or about February 15 of the following year.

404. NERC Monitoring of Compliance for Regional Entities, Regional Reliability Organizations, or Bulk Power Owners, Operator, or Users

NERC shall monitor regional entity or regional reliability organization compliance with NERC reliability standards and, if no there is no delegation agreement in effect with a regional entity for the geographic area, shall monitor bulk power system owners, operators, and users for compliance with NERC reliability standards. Industry experts may be used as appropriate in compliance violation investigations, compliance audits, and other compliance activities, subject to confidentiality, antitrust, and conflict of interest provisions.

1. **NERC Obligations** — NERC compliance enforcement staff shall monitor the compliance of the regional entity or regional reliability organization with the reliability standards for which the regional entities or regional reliability organizations are responsible. NERC shall actively monitor in its annual Compliance Enforcement and Monitoring Program selected reliability standards that apply to the regional entities or regional reliability organizations. NERC shall evaluate compliance and noncompliance with all of the reliability standards that apply to the regional entities or regional reliability organizations and shall impose sanctions, penalties, or remedial action directives when there is a finding of noncompliance. NERC shall post all violations of reliability standards that apply to the regional entities or regional reliability organizations as described in the reporting and disclosure process in Section 408.

In addition, NERC will directly monitor bulk power system owners, operators, and users for compliance with NERC Reliability Standards in any geographic area for which there is not a delegation agreement in effect with a regional entity. In such cases, NERC will serve as the Compliance Monitor described in the NERC Compliance Monitoring and Enforcement Program document. Compliance matters contested by bulk power system owners, operators, and users in such an event will be heard by the NERC Compliance and Certification Committee.

2. **Mitigation Plans** — An owner, operator or user of the bulk-power system or a regional reliability organization found by NERC to be in noncompliance with a reliability standard shall submit to NERC for approval a mitigation plan with a timeline addressing how the noncompliance will be corrected.
3. **Compliance Audit of the Regional Entity or Regional Reliability Organization** — NERC shall perform a compliance audit of each regional entity or regional reliability organization responsible for complying with reliability standards at least once every three years. NERC shall make an evaluation of compliance based on the information obtained through the audit. After due process is complete, the final audit report shall be made public in accordance with the reporting and disclosure process in Section 408.
4. **Appeals Process** — Any regional entity, regional reliability organization or bulk-power system owner, operator or user found by NERC, as opposed to a regional entity, to be in noncompliance with a reliability standard may appeal the findings of noncompliance with reliability standards and any sanctions, or remedial action directives that are issued by NERC pursuant to the processes described in Sections 409 through 411.

405. Monitoring of Standards and Other Requirements Applicable to NERC

The NERC Compliance and Certification Committee shall establish and implement a process to monitor NERC's compliance with the reliability standards that apply to NERC. The process shall use independent monitors with no conflict of interest, real or perceived, in the outcomes of the process. All violations shall be made public according to the reporting and disclosure process in Section 408. The Compliance and Certification

Committee will also establish a procedure for monitoring NERC's compliance with its Rules of Procedure for the Standards Development, Compliance Enforcement, and Organization Registration and Certification Programs. Such procedures shall not be used to circumvent the appeals processes established for those programs.

406. Independent Audits of the NERC Compliance Monitoring and Enforcement Program

NERC shall provide for an independent audit of its compliance monitoring and enforcement program at least once every three years, or more frequently as determined by the board. The audit shall be conducted by independent expert auditors as selected by the board. The independent audit shall meet the following minimum requirements and any other requirements established by the NERC board.

1. **Effectiveness** — The audit shall evaluate the success and effectiveness of the NERC Compliance Monitoring and Enforcement Program in achieving its mission.
2. **Relationship** — The audit shall evaluate the relationship between NERC and the regional entity compliance enforcement programs and the effectiveness of the programs in ensuring reliability.
3. **Final Report Posting** — The final report shall be posted by NERC for public viewing according to the reporting and disclosure process in Section 408.
4. **Response to Recommendations** — If the audit report includes recommendations to improve the NERC Compliance Monitoring and Enforcement Program, the administrators of the NERC Compliance Monitoring and Enforcement Program shall provide a written response and plan to the board within 30 days of the release of the final audit report.

407. Penalties, Sanctions, and Remedial Actions

1. **NERC Review of Regional Penalties and Sanctions** — NERC shall review all penalties, sanctions, and remedial actions imposed by each regional entity for violations of reliability standards for consistency with similar violations and fairness in application.
2. **Developing Penalties and Sanctions** — The regional entity compliance enforcement program staff shall use the *ERO Sanction Guidelines*, which are incorporated into these rules as **Appendix 4B**, to develop an appropriate penalty, sanction, or remedial action for a violation, and shall notify NERC of the penalty or sanction.
3. **Hearing Processes** — The regional entity shall make available a regional entity hearing process for entities to contest a finding of noncompliance, penalty, sanction, or remedial actions in which the bulk power system owner, operator, or user will be afforded the opportunity to present facts to rebut such a finding, conforming to Attachment 2 of the NERC Compliance Monitoring and Enforcement document. The regional entity shall also make available the NERC

appeals process for bulk power system owners, operators, and users seeking an opportunity to dispute a penalty, sanction, or remedial action. Appeals beyond NERC of a finding of noncompliance, penalty, sanction, or remedial action will be before the appropriate ERO governmental authority.

4. **Effective Date of Penalty** — Where authorized by applicable legislation or agreement, no penalty imposed for a violation of a reliability standard shall take effect until the thirty-first day after NERC files, with the applicable ERO governmental authority, a “notice of penalty” and the record of the proceedings in which the violation and penalty were determined, or such other date as ordered by the ERO applicable governmental authority.

408. Reporting and Disclosure Process

1. **Reporting Requirements** — Each regional entity shall report all known violations, self-reported, confirmed, and alleged, of all reliability standards to NERC in accordance with the requirements established in the NERC Compliance Monitoring and Enforcement Program procedures document. Probable violations from NERC readiness evaluations will be treated as alleged violations when reported by the regional entity to NERC after review by regional entity staff. Each regional entity shall promptly report any change in the status of a violation and the disposition of each violation. Reports on the disposition of a violation will be provided at least quarterly or as otherwise required by NERC for reporting to ERO governmental authorities. NERC shall promptly notify the applicable ERO governmental authority of any self-reported, confirmed, or alleged violation of a reliability standard, any compliance violation investigation, any imposition of a penalty or sanction, or any remedial action directive.
 - 1.1 Requirements of reliability standards for which noncompliance may cause bulk power system reliability to be diminished or at risk, will be identified by NERC and require reporting by the regional entity to NERC within 48 hours after the regional entity learns of the violation. Such reports shall include information regarding the nature and reliability impact of the alleged violations, the identity of the organizations involved, and the status and timetable of any compliance investigation. NERC will promptly report such violation to the applicable ERO governmental authority.
2. **Reporting Process** — NERC shall implement and maintain a reporting process and utilize appropriate tools to facilitate reporting of violations. The reporting process shall identify all of the information required to be included in a violation report. NERC will report the disposition of each violation or alleged violation to the applicable ERO governmental authority on a quarterly basis.
3. **Confidential Information** — NERC will treat all alleged violations and matters related to a compliance violation investigation, including the status of the compliance violation investigation, as confidential in accordance with Section 1500. Any entity seeking to protect information as confidential shall follow the procedures of Section 1500. This information may result from compliance

violation investigations, compliance audits, and proceedings concerning an alleged violation or proposed penalty or sanction.

Information that would jeopardize bulk power system reliability, including information relating to a Cyber Security Incident will be identified and protected from public disclosure as critical energy infrastructure information in accordance with Section 1500.

- 3.1 The regional entity and NERC shall give bulk power system owners, operators, and users a reasonable opportunity to demonstrate that information concerning a violation is confidential before such report is disclosed to the public.
- 3.2 The types of information that will be considered confidential and will not (subject to statutory and regulatory requirements) be disclosed in any public information reported by NERC are identified in Section 1500.
4. **Reporting Updated Information** — Each regional entity and NERC shall report new information on each confirmed or alleged violation as it is received and processed.
5. **Violation Information Review** — NERC staff shall periodically review and analyze all reports of violations to identify trends, chronic violators, and other pertinent reliability issues.
6. **Public Posting** — When the affected bulk power system owner, operator, or user either agrees with the violation(s) or report, or the time for submitting an appeal is passed, or all appeals processes are complete, NERC shall publicly post each confirmed violation, penalty or sanction, and final compliance audit or compliance violation investigation report on its Web site.
 - 6.1 Each bulk power system owner, operator, or user may provide NERC with a statement to accompany the violation or report to be posted publicly. The statement must be on company letterhead and include a signature, as well as the name and title of the person submitting the information.
 - 6.2 In accordance with Section 1500, information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information (*NERC Security Guidelines for the Electricity Sector — Protecting Potentially Sensitive Information* may be used as a guide) or other confidential information shall be redacted in accordance with Section 1500 and not be released publicly.
 - 6.3 Subject to redaction of critical energy infrastructure information or other confidential information, for each confirmed violation or settlement relating to an alleged violation, the public posting shall include the name of any relevant entity, the nature, time period, and circumstances of such violation or alleged violation, and sufficient facts to enable owners,

operators and users of the bulk power system to evaluate whether they have engaged in or are engaging in similar activities.

409. Review of NERC Decisions

1. **Scope of Review** — A registered entity or a regional entity wishing to challenge a finding of noncompliance and the imposition of a penalty for a compliance measure directly administered by NERC, or a regional entity wishing to challenge a regional compliance program audit finding, may do so by filing a notice of the challenge with NERC's director of compliance no later than 21 days after issuance of the notice of finding of violation or audit finding. Appeals by registered entities of decisions of regional entity hearing bodies shall be pursuant to sections 407.3 and 410.
2. **Contents of Notice** — The notice of challenge shall include the full text of the decision that is being challenged, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief.
3. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of challenge, the NERC Director of Compliance may file with the hearing body a response to the issues raised in the notice, with a copy to the regional entity.
4. **Hearing by Compliance and Certification Committee** — The NERC Compliance and Certification Committee shall provide representatives of the regional entity or registered entity, and the NERC Compliance Monitoring and Enforcement Program an opportunity to be heard and shall decide the matter based upon the filings and presentations made, with a written explanation of its decision.
5. **Appeal** — The regional entity or registered entity may appeal the decision of the Compliance and Certification Committee by filing a notice of appeal with NERC's director of compliance no later than 21 days after issuance of the written decision by the Compliance and Certification Committee. The notice of appeal shall include the full text of the written decision of the Compliance and Certification Committee that is being appealed, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not presented to the Compliance and Certification Committee.
6. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of appeal, the NERC Compliance Monitoring and Enforcement Program staff may file its response to the issues raised in the notice of appeal, with a copy to the entity filing the notice.

7. **Reply** — The entity filing the appeal may file a reply within 7 days.
8. **Decision** — The Compliance Committee of the NERC Board of Trustees shall decide the appeal, in writing, based upon the notice of appeal, the record, the response, and any reply. At its discretion, the Compliance Committee may invite representatives of the regional entity or registered entity, and the NERC Compliance Monitoring and Enforcement Program to appear before the Committee. Decisions of the Compliance Committee shall be final, except for further appeal to the applicable ERO governmental authority.
9. **Impartiality** — No member of the Compliance and Certification Committee or the Board of Trustees Compliance Committee having an actual or perceived conflict of interest in the matter may participate in any aspect of the challenge or appeal except as a party or witness.
10. **Expenses** — Each party in the challenge and appeals processes shall pay its own expenses for each step in the process.
11. **Non-Public Proceedings** — All challenges and appeals shall be closed to the public to protect confidential information.

410. Appeals from Final Decisions of Regional Entities

1. **Time for Appeal** — An owner, operator or user of the bulk-power system wishing to appeal from a final decision of a regional entity that finds a violation of a reliability standard or imposes a penalty for violation of a reliability standard shall file its notice of appeal with NERC's director of compliance, with a copy to the regional entity, no later than 21 days after issuance of the final decision of the regional entity hearing body. The same appeal procedures will apply regardless of whether the matter first arose in a compliance violation investigation, compliance audit or self-report, or in a reliability readiness evaluation.
2. **Contents** — The notice of appeal shall include the full text of the final decision of the regional entity hearing body that is being appealed, a concise statement of the error or errors contained in the final decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not first presented during the compliance hearing before the regional entity hearing body.
3. **Response by Regional Entity** — Within 21 days after receiving a copy of the notice of appeal, the regional entity shall file the entire record of the matter with NERC's director of compliance, with a copy to the entity filing the notice, together with its response to the issues raised in the notice of appeal.
4. **Reply** — The entity filing the appeal may file a reply to the regional entity within 7 days.

5. **Decision** — The Compliance Committee of the NERC Board of Trustees shall decide the appeal, in writing, based upon the notice of appeal, the record of the matter from the regional entity, the response, and any reply filed with NERC. At its discretion, the Compliance Committee may invite representatives of the entity making the appeal and the regional entity to appear before the Committee. Decisions of the Compliance Committee shall be final, except for further appeal to the applicable ERO governmental authority.
6. **Expenses** — Each party in the appeals process shall pay its own expenses for each step in the process.
7. **Non-Public Proceedings** — All appeals shall be closed to the public to protect confidential information.

411. Hold Harmless

A condition of invoking the challenge or appeals processes under Section 409 or 410 is that the entity requesting the challenge or appeal agrees that neither NERC (defined to include its members, Board of Trustees, committees, subcommittees, staff and industry volunteers), any person assisting in the challenge or appeals processes, nor any company employing a person assisting in the challenge or appeals processes, shall be liable, and they shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the challenge or appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.

SECTION 500 — ORGANIZATION REGISTRATION AND CERTIFICATION

501. Scope of the Organization Registration and Certification Program

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

The purpose of the compliance registry will be to clearly identify those entities that are responsible for compliance with reliability standards. Organizations listed on the registry will be responsible for knowing the content of and for complying with the NERC reliability standards. Organizations listed in the registry are not, nor do they become, members of NERC, a regional entity, or a regional reliability organization by virtue of being listed in the compliance registry. Membership in NERC is governed by Article II of NERC's bylaws; membership in a regional entity or regional reliability organization is governed by that entity's bylaws or rules.

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

1. **Compliance Registry** — NERC shall establish and maintain a compliance registry of the bulk power system owners, operators, and users that are subject to approved reliability standards.
 - 1.1 The registry shall set forth the identity and functions performed for each organization responsible for meeting requirements of the reliability standards including: reliability coordinators, balancing authorities, transmission operators, transmission owners, generator operators, generator owners, transmission service providers, planning authorities, transmission planners, resource planners, load-serving entities, purchasing-selling entities, and distribution providers. Bulk power system owners, operators, and users shall provide to NERC and the applicable regional entity such information as is necessary to complete the registration.
 - 1.2 NERC and regional entities assisting NERC in the development of the compliance registry shall consider the following factors in determining which organizations should be placed in the registry:
 - 1.2.1 Owners and operators of bulk power system facilities will generally be included in the registry;

- 1.2.2 As identified by regional reliability organizations, electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher will be considered part of the bulk power system;
- 1.2.3 Radial transmission facilities serving only load with one transmission source, without more, will not be considered part of the bulk power system;
- 1.2.4 A customer that receives electric service at retail and does not otherwise directly receive, sell, purchase, or transmit power over the bulk power system or own, operate, maintain, or control facilities or systems that are part of the bulk power system will not in general be considered a user of the bulk power system;
- 1.2.5 An entity directly connected to the bulk power system selling, purchasing, or transmitting electric energy over the bulk power system will generally be considered a user of the bulk power system, unless the entity's actions or facilities have no material impact on the bulk power system;
- 1.2.6 Notwithstanding the other considerations in this Section 1.2, if the consequences of an entity's actions or inactions could have a material impact on the bulk power system, that entity may be considered a user of the bulk power system;
- 1.2.7 (a) A generation or transmission cooperative, a joint-action agency or another organization (a Joint Registration Organization or JRO) may be registered, in lieu of each of the JRO's members or related entities being registering individually, by the JRO accepting the reliability functions identified in Section 1.1 above, or (b) a JRO and its members or related entities may enter into a written agreement as to which of them will be responsible for one or more reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards, in either case in accordance with the provisions specified in Section 507 (each of (a) and (b), a "joint registration").

For purpose of this Section 501.1.2.7 and Section 507, a "related entity" is an entity whose operations in relation to the operation of the JRO make it feasible for the JRO to accept responsibility for reliability functions for which the related entity would otherwise be responsible. A non-exclusive list of examples of JROs and related entities includes (i) a balancing authority or a transmission

provider as the JRO, and (ii) a load-serving entity or a distribution provider within the balancing authority's control area or receiving transmission services from the transmission provider, as the related entity.

- 1.3 NERC and the regional entities shall use the following procedure for establishing and maintaining the compliance registry:
 - 1.3.1 NERC shall notify each organization of its intent to place the organization on the compliance registry.
 - 1.3.2 Any organization receiving such a notice may challenge the decision to include it on the compliance registry by filing its written objection with NERC's director of compliance within 21 days stating the reasons it believes it should not be considered a bulk power system owner, operator, or user.
 - 1.3.3 The Compliance Committee of the Board of Trustees will promptly issue a written decision on the challenge, including the reasons for the decision.
 - 1.3.4 The decision of the Compliance Committee shall be final unless, within 21 days, the organization appeals the decision to the applicable governmental authority.
 - 1.3.5 At any time a person may recommend in writing, with supporting reasons, to the director of compliance that an organization be added to or removed from the compliance registry.
 - 1.3.6 The compliance registry shall be dynamic and be revised as necessary to take account of changing circumstances. NERC will take such recommendations, and other applicable information, under advisement as it determines whether an entity should be on the compliance registry.
 - 1.3.7 Each entity identified in the registry shall notify NERC and its corresponding regional entity of any changes in ownership, corporate structure, or similar matters that affect the entity's responsibilities with respect to the reliability standards. Failure to notify will not relieve the entity from any responsibility to comply with the reliability standards or shield it from any penalties or sanctions associated with failing to comply with such standards.
- 1.4 For all geographical or electrical areas of the bulk power system, the registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and required by the reliability standards to the fullest extent practical, and (2) there is no duplication of such coverage or of required oversight of such coverage.

In particular the process shall:

- 1.4.1 Ensure that all areas are under the oversight of one and only one reliability coordinator.
 - 1.4.2 Ensure that all balancing authorities and transmission operator entities² are under the responsibility of one and only one reliability coordinator.
 - 1.4.3 Ensure that all transmission elements of the bulk power system are the responsibility and under the control of one and only one transmission planner, planning authority, and transmission operator.
 - 1.4.4 Ensure that all loads and generators are under the responsibility and control of one and only one balancing authority.
 - 1.5 NERC shall maintain publicly available process documentation.
 - 1.6 NERC shall maintain the compliance registry of organizations responsible for meeting the requirements of the reliability standards currently in effect on its Web site and shall update the compliance registry monthly.
2. **Entity Certification** — NERC shall provide for certification of all entities with primary reliability responsibilities requiring certification as established in the NERC reliability standards. The NERC program shall:
- 2.1 Evaluate and certify the competency of entities performing reliability functions. The entities presently expected to be certified include reliability coordinators, transmission operators, and balancing authorities. Other entities may be added, as required, by approved reliability standards.
 - 2.2 Certify each entity's ability to meet the minimum requirements established by the NERC reliability standards for each function.
 - 2.3 Maintain process documentation.
 - 2.4 Maintain records of currently certified entities.
3. **Delegation and Oversight**

² Some organizations perform the listed functions (e.g., balancing authority, transmission operator) over areas that transcend the footprints of more than one reliability coordinator. Such organizations will have multiple registrations, with each such registration corresponding to that portion of the organization's overall area that is within the footprint of a particular reliability coordinator.

- 3.1 NERC may delegate the responsibilities of registration and certification to regional entities in accordance with requirements established by NERC. Delegation will be via the delegation agreement between NERC and the regional entity or other applicable agreement. The regional entity shall administer an organization registration and certification program to meet NERC's program goals and requirements.
- 3.2 NERC shall develop and maintain a plan to ensure the continuity of organization registration and certification within the geographic or electrical boundaries of a regional entity in the event that no entity is certified as a regional entity for that region, or the regional entity withdraws as a regional entity, or does not operate its organization registration and certification program in accordance with delegation agreements and other requirements.
- 3.3 NERC shall develop and maintain a program to monitor and oversee each regional entity registration and certification program that is delegated authority through a delegation agreement or other applicable agreement.
 - 3.3.1 This program shall monitor whether the regional entity carries out its organization registration and certification program in accordance with NERC requirements, and whether there is consistency, fairness of administration, and comparability of outcomes within each regional entity's certification and registration program and among all of the programs.
 - 3.3.2 Monitoring and oversight shall be accomplished through direct participation in certification audits and periodic reviews of program documents and records.

502. ERO Organization Registration and Certification Program Requirements

1. NERC shall have final authority in all matters constituting the organization registration and certification program.
 - 1.1 The roles and authority of regional entities in the program are delegated from NERC pursuant to the rules of procedure through regional delegation agreements or other applicable agreements.
 - 1.2 Processes for the program shall be owned by NERC; materials that each regional entity may use to participate in the program may be adapted by that organization subject to prior review and approval by NERC.
 - 1.3 Regional entities participating in the program shall perform their roles and responsibilities to meet NERC's requirements, as specified in the rules of procedure or NERC approved materials, including requirements for quality, thoroughness, timeliness, accuracy, efficiency, cost-effectiveness, and participation.

- 1.4 Regional entity's decisions to grant or deny certifications shall be subject to NERC review and action, including modification or reversal.
 - 1.5 Regional entity's decisions with respect to the use of the transitional certification processes, as now provided for within the NERC *Organization Registration and Certification Manual (Appendix 5)*, are subject to NERC review and action, including modification or reversal, should NERC deem such review or action warranted.
 - 1.6 Notwithstanding an entity's interest and right to object to the makeup of the certification team that will conduct the review of that entity, NERC, or the regional entity as authorized by NERC, will have final authority on the membership and member roles of that team.
 - 1.7 NERC, or the regional entity as authorized by NERC, shall make all assessments and decisions with respect to all aspects of the organization registration and certification program, including the completeness and accuracy of entities' applications.
2. To ensure consistency and fairness of the program, NERC shall develop procedures to be used by all regional entities in carrying out their organization registration and certification programs, in accordance with the following criteria:
- 2.1 NERC and the regional entities shall have data management processes and procedures that provide for integrity and retention of data and information collected.
 - 2.2 To maintain the integrity of the NERC Organization Registration and Certification Program, NERC, regional entities, certification audit team members, and committee members shall maintain the confidentiality of information provided by entities in order to become registered or certified.
 - 2.2.1 NERC and the regional entities shall have appropriate codes of conduct and confidentiality agreements for staff and other certification audit participants. Individuals not bound by ERO or approved regional entity codes of conduct and who serve on certification-related committees or audit teams shall sign an ERO confidentiality agreement prior to participating on the committee or team.
 - 2.2.2 Staff, committee, and audit team members shall maintain the confidentiality of any certification-related discussions or documents that are designated as confidential (see Section 1500 for types of confidential information). Staff, committee, and audit team members shall treat as confidential the individual comments expressed during audits and report-drafting sessions.

- 2.2.3 Copies of notes, draft reports, and other interim documents developed or used during a certification audit shall be destroyed after the public posting of a final, uncontested report.
 - 2.2.4 Information deemed by an entity, a regional entity, or NERC as confidential or critical energy infrastructure information shall not be distributed outside of a committee or team, or released publicly.
 - 2.2.5 In the event that a staff, committee, or audit team member violates any of the confidentiality rules set forth above, the staff, committee, or audit team member and any member organization with which the individual is associated may be subject to immediate dismissal from the audit team and may be prohibited from future participation in compliance program activities by the regional entity or NERC.
 - 2.2.6 NERC shall develop and provide training in auditing skills to all individuals who participate in certification audits. Training for ERO and regional entity personnel, as well as audit team leaders, shall be more comprehensive than training given to industry experts, regional entity members, and volunteers. Training for regional entity members and volunteers may be delegated to the regional entity.
- 2.3 An entity that is determined to be competent to perform a function after completing all certification requirements shall be deemed certified by NERC to perform that function.
- 2.3.1 An entity deemed certified by NERC to perform a function shall be considered and may be referred to, for example, as a certified transmission operator, certified balancing authority, or certified reliability coordinator. Only entities that have received such certifications from NERC shall be so designated.
 - 2.3.2 NERC shall award certification to an entity only after it has demonstrated full competency to all certification requirements. An entity shall be awarded certification only for each function for which it has demonstrated full competency

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

- 1. **Delegation** — Recognizing the regional entity’s knowledge of and experience with their members, NERC may delegate responsibility for organization registration and certification to the regional entity through a delegation agreement or such responsibilities may be established through another applicable agreement.

2. **Registration** — The following organization registration activities shall be performed by the regional entity in accordance with the NERC Organization Registration and Certification Procedures, which are incorporated into the Rules of Procedure as **Appendix 5**.
 - 2.1 Entities seeking registration shall contact the regional entity in which they operate to become registered and, if necessary, certified.
 - 2.2 Regional entities shall verify that all balancing authorities and transmission operators are under the responsibility of one and only one reliability coordinator.
 - 2.3 Regional entities shall verify that all transmission elements of the bulk power system operated within their geographic boundaries are under the authority and control of one and only one transmission planner, planning authority, transmission owner, and transmission operator.
 - 2.4 Regional entities shall verify that all loads and generation sources within their geographic boundaries are under the authority and control of one and only one balancing authority.
 - 2.5 Regional entities shall verify that no geographical or electrical areas of the bulk power system within their boundaries have duplication of coverage or are lacking an entity to perform required duties and tasks as identified in the reliability standards.
3. **Certification** — The following organization certification activities shall be performed by the regional entity in accordance with an approved ERO delegation agreement or another applicable agreement:
 - 3.1 Entities seeking certification to perform one of the functions requiring certification shall contact the regional entity for the region(s) in which they operate to apply for certification. NERC shall have oversight of the regional entity's certification activities and processes.
 - 3.2 Entities seeking certification and other affected operators shall provide all information and data requested by NERC or the regional entity to conduct the certification process, in accordance with 18 C.F.R. Section 39.2 in the United States.
 - 3.3 Regional entities shall contact entities directly and provide notice of the requirement to be certified by NERC and initiate the process to certify any entities that do not voluntarily contact the regional entity or NERC.
 - 3.4 Regional entities shall notify NERC of all certification applicants, including those not voluntarily seeking certification.

- 3.5 The regional entity shall establish certification procedures to include audit processes, schedules and deadlines, expectations of the applicants and all entities participating in the audit and certification processes, and requirements for certification auditors.
- 3.5.1 The regional entity certification procedures will include provisions for on-site visits to the applicant's facilities to review the data collected through questionnaires, interviewing the operations and management personnel, inspecting the facilities and equipment (and requesting a demonstration of all tools identified in the certification standard), reviewing all necessary documents and data (including all agreements, processes, and procedures identified in the certification standard), reviewing certification documents and projected system operator work schedules, and reviewing any additional documentation that is needed to support the completed questionnaire or inquiries arising during the site visit.
- 3.5.2 All industry experts and regional members participating in certification audits shall successfully complete appropriate training provided by NERC or the regional entity prior to performing an audit.
- 3.5.3 The regional entity certification procedures will provide for preparation of a written report by the audit team detailing any deficiencies that must be resolved prior to certification along with any other recommendations for consideration by the entity, the regional entity, or NERC.
- 3.5.4 The regional entity shall evaluate the competency of entities requiring certification to meet the minimum requirements established by the standards for each such function based on the requirements established by NERC.

504. Appeals

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

505. Program Maintenance

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

506. Independent Audit of NERC Organization Certification Program

1. NERC shall provide for an independent audit of its organization certification program at least once every three years, or more frequently, as determined by the board. The audit shall be conducted by independent expert auditors as selected by the board.
2. The audit shall evaluate the success and effectiveness of the NERC organization certification program in achieving its mission.
3. The final report shall be posted by NERC for public viewing according to the reporting and disclosure process in Section 408.
4. If the audit report includes recommendations to improve the program, the administrators of the program shall provide a written response and plan to the board within 30 days of the final report.

507. Provisions Relating to Joint Registrations and Joint Registration Organizations

1. **Registration by a JRO.** In addition to registering as the entity responsible for all functions that a JRO performs itself, a JRO may register on behalf of one or more of its members or related entities for one or more functions as to which such members or related entities would otherwise be required to register, and thereby accept on behalf of such members or related entities all compliance responsibility, including reporting requirements, for all requirements of reliability standards applicable to the function or functions for which the JRO has registered on behalf of its members or related entities. Any entity seeking to register as a JRO for any or all requirements identified in the reliability standards that would otherwise be the responsibility of one or more of its members or related entities shall provide to the applicable regional entity information, in the form requested by the regional entity, sufficient to identify whether the entity or its member(s) or related entities will be responsible for compliance with each provision of the reliability standards for the applicable functional responsibilities covered by the joint registration. The JRO must identify its primary compliance contact. The JRO primary compliance contact is responsible for providing all of the information and data, including submitting reports, as needed by the regional entity for performing assessments of compliance.
2. **Joint registration pursuant to written agreement.** Where a JRO and any of its members or related entities agree, in writing, upon a division of compliance responsibility among them for one or more reliability standard(s) applicable to a particular function, and/or for one or more requirements within particular reliability standard(s), both the JRO and such member(s) or related entit(ies) shall register as an organization responsible for that function. The JRO and its

member(s) or related entit(ies) must have a written agreement that clearly specifies their respective responsibilities, which shall be submitted as part of the joint registration. Neither NERC nor the regional entity shall be parties to any such agreement between a JRO and its member or related entit(ies), nor shall NERC or the regional entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the joint registration.

3. NERC or the regional entity may request clarification of any list submitted to it that identifies the compliance responsibilities of the JRO and its member(s) or related entit(ies), and may request such additional information as NERC or the regional entity deems appropriate.
4. The regional entity shall notify NERC of each joint registration that the regional entity accepts. The regional entity's acceptance of a joint registration shall be a representation by the regional entity to NERC that the regional entity has concluded the joint registration will result in (1) no areas lacking any entities to perform the duties and tasks identified in and required by the reliability standards, and (2) no unnecessary duplication of such coverage of areas by entities to perform the duties and task identified in and required by the reliability standards or of required oversight of such coverage.
5. NERC shall maintain, and shall post on its web site, a Joint Registration Organization registry listing all joint registrations that have been accepted by NERC or by a regional entity and the reliability standards or requirements thereof for which each JRO and each of its members or related entities is responsible under the joint registration. The postings on NERC's web site shall clearly identify the compliance responsibilities of the JRO and of each of its member(s) or related entit(ies). Such postings are intended to enable reliability coordinators and other system operators to be fully aware of responsibilities and chains of command in order to respond quickly and decisively to system operation events.
6. Annually following submission of a joint registration, the JRO shall provide the regional entity with a list, in a form specified by the regional entity, that identifies the members or related entities and the functions for which the JRO has registered on behalf of such members or related entities and for which the JRO assumes compliance responsibility. Additionally, a JRO shall provide a revised list of compliance responsibilities to the regional entity each time the JRO accepts additional compliance responsibilities for a member or related entity or for a new member or related entity and each time that any compliance reliability reverts from the JRO to a member or related entity. The regional entity shall promptly notify NERC of each such revision.
7. In the event of a violation of a reliability standard or of a requirement of a reliability standard, the JRO or its member or related entity identified in the Joint Registration Organization registry as responsible for such reliability standard or requirement shall be identified in the notice of alleged violation and shall be

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

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

SECTION 600 — PERSONNEL CERTIFICATION

601. Scope of Personnel Certification

Maintaining the reliability of the bulk electric system through implementation of the reliability standards requires skilled, trained and qualified system operators. The System Operator Certification Program provides the mechanism to ensure system operators are provided the education and training necessary to obtain the essential knowledge and skills and are therefore qualified to operate the bulk electric system. NERC, as the ERO, will ensure skilled, trained, and qualified system operators through the System Operator Certification Program.

NERC shall develop and maintain a personnel certification program to evaluate individuals and to issue credentials to individuals who demonstrate the required level of competence. A current version of such a program is the *System Operator Certification Program Manual*, which is incorporated into these rules as **Appendix 6**.

602. Structure of ERO Personnel Certification Program

1. The NERC personnel certification program shall be international in scope.
2. The personnel certification program shall have a governing body that (1) is able to independently exercise decision-making for all matters pertaining to certification, (2) includes individuals from the discipline being certified and whose composition addresses the needs of the users of the program (e.g., employers, regulators, etc.), and (3) has representation for each specialty or level within a discipline.
3. NERC shall maintain a nominating process for membership in the governing body. Nominations shall be open to all interested parties and self-nominations shall be accepted. The NERC Board of Trustees shall appoint members to the governing body from among those nominated. The members of the governing body shall serve at the pleasure of the board.
4. The personnel certification program governing body shall have control over the matters related to the personnel certification and recertification programs listed below, without being subject to approval by any other body.
 - 4.1 Policies and procedures, including eligibility requirements and application processing.
 - 4.2 Requirements for personnel certification, maintaining certification, and recertification.
 - 4.3 Examination content, development, and administration.
 - 4.4 Examination cut score.
 - 4.5 Grievance and disciplinary processes.

- 4.6 Governing body and subgroup(s)' meeting rules including agenda, frequency, and related procedures.
 - 4.7 Subgroup(s) appointments and work assignments.
 - 4.8 Publications about personnel certification and recertification.
 - 4.9 Setting fees for application, and all other services provided as a part of the personnel certification and recertification activities.
 - 4.10 Program funding, spending, and budget authority. Financial matters related to the operation of the program shall be segregated from other NERC activities.
5. The personnel certification program shall utilize written procedures for the selection of members of the governing body that prohibit the governing body from selecting a majority of its successors.
 6. The personnel certification program shall be separate from the accreditation and education functions of NERC in related disciplines.
 7. No member of the personnel certification program governing body or staff member working with the personnel certification program governing body shall have or exercise any authority or responsibility for compliance matters related to reliability standards concerning personnel certification.

603. Candidate Testing Mechanisms

1. The personnel certification program shall utilize reliable testing mechanisms to evaluate individual competence in a manner that is objective, fair to all candidates, job-related, and based on the knowledge and skill needed to function in the discipline.
2. The personnel certification program shall implement a formal policy of periodic review of the testing mechanisms to ensure ongoing relevance of the mechanisms to knowledge and skill needed in the discipline.
3. The personnel certification program shall utilize policies and procedures to ensure that all test administration and development materials are secure and demonstrate that these policies and procedures are consistently implemented.
4. The personnel certification program shall establish pass/fail levels that protect the public with a method that is based on competence and generally accepted in the psychometric community as being fair and reasonable.
5. The personnel certification program shall conduct ongoing studies to substantiate the reliability and validity of the testing mechanisms.

6. The personnel certification program shall utilize policies and procedures that govern how long examination records are kept in their original format.
7. The personnel certification program shall demonstrate that different forms of the testing mechanisms assess equivalent content and that candidates are not penalized for taking forms of varying difficulty.

604. Public Information About the Personnel Certification Program

1. The personnel certification program shall provide for publishing and availability of general descriptive material on the procedures used in examination construction and validation; all eligibility requirements and determination; fees; and examination administration documents, including: reporting of results, recertification requirements, and disciplinary and grievance procedures.
2. The personnel certification program shall publish and make available a comprehensive summary or outline of the information, knowledge, or functions covered by the examination.
3. The personnel certification program shall publish and make available at least annually a summary of certification activities for the program, including at least the following information: number of examinations delivered, the number passed, the number failed, and the number certified.

605. Responsibilities to Applicants for Certification or Recertification

The personnel certification program:

1. Shall not discriminate among applicants as to age, gender, race, religion, national origin, disability, or marital status and shall include a statement of non-discrimination in announcements of the program.
2. Shall comply with all requirements of applicable federal and state/provincial laws with respect to all certification and recertification activities, and shall require compliance of all contractors and/or providers of services.
3. Shall make available to all applicants copies of formalized procedures for application for, and attainment of, personnel certification and recertification and shall uniformly follow and enforce such procedures for all applicants.
4. Shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.
5. Shall provide competently proctored examination sites.
6. Shall uniformly report examination results to applicants in a timely manner.
7. Shall give applicants failing the examination information on general content areas of deficiency.

8. Shall implement policies and procedures providing due process for applicants questioning eligibility determination, examination results, and certification status, and shall publish this information. A current version of such a procedure is the *NERC System Operator Certification Dispute Resolution Process*, which is incorporated into these rules as part of **Appendix 6**.
9. Shall develop and maintain a program manual containing the processes and procedures for applicants for certification and recertification.

606. Responsibilities to the Public and to Employers of Certified Practitioners

The personnel certification program:

1. Shall demonstrate that the testing mechanisms adequately measure the knowledge and skill required for entry, maintenance, and/or advancement in the profession for each position to be certified.
2. Shall award certification and recertification only after the skill and knowledge of the individual have been evaluated and determined to be acceptable.
3. Shall periodically publish or maintain, in an electronic format, a current list of those persons certified in the programs and have policies and procedures that delineate what information about a credential holder may be made public and under what circumstances.
4. Shall have formal policies and procedures for discipline of a credential holder, including the revocation of the certificate, for conduct deemed harmful to the public or inappropriate to the discipline (e.g., incompetence, unethical behavior, physical or mental impairment affecting performance). These procedures shall incorporate due process. The current procedure is the *NERC Certified System Operator Credential Disciplinary Action Procedure*, which is incorporated into these rules as part of **Appendix 6**.
5. Shall demonstrate that any title or credential awarded accurately reflects or applies to the practitioner's daily occupational or professional duties and is not confusing to employers, consumers, regulators, related professions, and/or other interested parties.

SECTION 700 — RELIABILITY READINESS EVALUATION AND IMPROVEMENT

701. Scope of the Reliability Readiness Evaluation and Improvement Program

The readiness evaluations are designed to ensure that operators of the bulk electric system have the facilities, tools, processes, and procedures in place to operate reliably under future conditions. The evaluations help balancing authorities, transmission operators, reliability coordinators, and others that provide support to these operators recognize and assess their reliability responsibilities and evaluate how their operations support those responsibilities. The evaluation team may also evaluate transmission planner and transmission owner functions in concert with the evaluation of reliability coordinators, balancing authorities, and transmission operators. NERC uses the results of these evaluations to champion the changes required to improve the reliability performance of these entities and achieve excellence in the assigned reliability functions and responsibilities. A companion goal of the program is to identify and promote examples of excellence within the industry.

Monitoring compliance with reliability standards provides only a historical perspective by determining if a registered entity has complied with the NERC reliability standards over some prescribed period in the past. An effective ERO will also recognize that monitoring compliance absent a system emergency or disturbance does not effectively preserve reliability or ensure the ability to perform and achieve excellence during a system emergency or disturbance.

NERC identifies those entities with primary reliability responsibilities and provides guidance to help them achieve operational excellence through the Reliability Readiness Evaluation and Improvement Program. This program recognizes that standards cannot prescribe all aspects of reliable operations and that NERC standards present a threshold, not a target, for performance and excellence in the industry. Balancing authorities, transmission operators, reliability coordinators, and others that provide support to these operators must be ready to perform under emergency conditions while striving for excellence in their assigned reliability functions and responsibilities.

NERC maintains a reliability readiness evaluation and improvement program for the purpose of promoting compliance with reliability standards and enhancing the reliability of the bulk power system. The program assesses the reliability readiness of reliability coordinators, balancing authorities, transmission operators, and others performing delegated tasks for these operators to operate the bulk power system reliably, and to identify opportunities for improvement. NERC may also create sector forums (see section 712) to enhance the reliability of the bulk power system by providing a mechanism for members of a particular industry sector, using peer review and mutual assistance, to identify best practices in the safety and reliability of the bulk power system, to disseminate lessons learned from disturbances, near misses, and other events, and to encourage all members of the sector to implement those practices and lessons on a timely basis. The Reliability Readiness Evaluation and Improvement Program will coordinate with the sector forums as appropriate to provide input from the readiness evaluations.

702. Structure of the Reliability Readiness Evaluation and Improvement Program

1. NERC shall have overall responsibility for coordinating readiness evaluations in accordance with the NERC *Readiness Evaluation Procedure*, the current version of which is incorporated into these rules as **Appendix 7**. These rules of procedure take precedence for any conflicts or inconsistencies that exist with the NERC *Readiness Evaluation Procedure*.
2. NERC staff shall have the primary responsibility for executing the following procedural steps: (1) development of the overall schedule in conjunction with the appropriate regional entity to coordinate evaluation activities; (2) initiation of the evaluation process for each entity; (3) provision of evaluation questionnaires, processes, data requests, documentation, and criteria; (4) identification of readiness evaluation team members; (5) coordination of evaluated entity and neighboring entity questionnaires; and (6) publication of findings.
3. The NERC evaluation team shall perform the following functions: (1) review the entity's questionnaire responses and documentation and research any issues or events identified; (2) perform the on-site evaluations; and (3) prepare a report of findings.

703. Scheduling of Readiness Evaluations

1. NERC staff in conjunction with the regional entities shall prepare a three-year cycle of readiness evaluations that will be updated annually by a date specified by NERC.
2. NERC shall obtain from the regional entity the identity of a contact person at each entity to be evaluated.
3. Readiness evaluations and compliance audits shall be conducted with separate processes, but may occur concurrently if separate personnel are used.

704. Resources for Readiness Evaluations

1. NERC shall select an evaluation team in advance of each evaluation according to a schedule specified by NERC.
2. The evaluation team shall consist of members possessing expertise and experience specified by NERC.
3. The evaluation team shall be of a size and composition specified by NERC.
4. If an entity to be evaluated raises an objection to an evaluation team member's participation, it must do so in writing to NERC stating clearly the basis for the objection. Upon receipt of such objection, the Director of NERC's Readiness Evaluation and Improvement program will attempt to resolve the issue to the mutual agreement of the entity being evaluated and the individual and/or entity for whom the individual is employed, utilizing guidance from the regional entities

as appropriate.

If this process does not result in a mutually acceptable agreement, the Director will resolve the objection based on the following factors:

- a. Team member was previously employed by entity to be evaluated within the previous three years;
 - b. Team member was previously employed by entity to be evaluated and whose employment ended unfavorably;
 - c. Team member is in active litigation with the entity to be evaluated;
 - d. Team member has a direct financial interest in the entity to be evaluated;
 - e. Team member is employed in a company under the same corporate umbrella as the entity to be evaluated;
 - f. The team member's employer and the entity to be evaluated are engaged in active litigation; and
 - g. Other matters that may interfere with the exercise of independent judgment.
5. NERC shall develop and provide training in evaluation skills to all individuals who participate in readiness evaluations. Training for NERC evaluation team leaders and regional entity personnel shall be more comprehensive than training given to industry experts and regional members.
 6. All team members and observers shall sign and abide by a NERC confidentiality agreement prior to participating in any of the evaluation activities unless bound by NERC or other codes of conduct acknowledged by NERC to be acceptable. Copies of the signed confidentiality agreements shall be maintained by NERC and be available upon request by the evaluated entity.
 7. To maintain the focus and size of the evaluation team, the use of observers will be limited. Observers must be expressly agreed upon by both NERC and the entity being evaluated. The role of observers is limited to observing the process. Observers shall not participate in the creation and editing of the report or its findings, or interfere with the evaluation process. The team leader may remove any observer from the evaluation who is not abiding by these criteria.

705. Pre-Readiness Evaluation Activities

NERC will require certain information to perform readiness evaluations of operating entities. These entities shall provide to NERC such information as is necessary to conduct the readiness evaluations.

1. Prior to an evaluation, NERC shall provide the entity a request for information and a questionnaire. The entity shall return the requested information and the completed questionnaire according to a schedule specified by NERC. In its

submission to the request for information, the entity to be evaluated shall identify all tasks that have been delegated to another entity.

2. NERC shall provide a questionnaire to neighboring operating entities with which the evaluated entity routinely interacts. The neighboring operating entities shall return the completed questionnaires within a period of time specified by NERC.
3. Prior to the evaluation, NERC shall provide an evaluation agenda to the entity to be evaluated.
4. The evaluation team will receive the following information upon receipt of a signed confidentiality agreement according to a schedule specified by NERC.
 - a. The evaluated entity's completed questionnaire and supporting documentation;
 - b. The neighboring operating entities' completed questionnaires; and
 - c. The on-site agenda.
5. The evaluation team will coordinate before the on-site evaluation begins to review questionnaire responses, identify areas requiring further investigation, discuss concerns, coordinate the interview process, and assign responsibilities during the on-site visit.

706. On-Site Activities for the Readiness Evaluation

1. The evaluation team will meet on-site for a period defined by NERC to conduct the readiness evaluation according to the agenda provided in advance. The team will conduct interviews with personnel, review documentation, and make observations about the entity's tools, facilities, and processes.
2. The team's findings shall be based on data collected from the entity's questionnaire and documentation, neighboring operating entities' questionnaires, and observations and information collected during the on-site visit.
3. Evidence of possible noncompliance with a reliability standard shall be reported to NERC and to the applicable regional entity for resolution through the applicable Compliance Monitoring and Enforcement Program. If the issue is judged to be an immediate threat to reliability, the notification to NERC and the regional entity shall be made within 24 hours of discovery. Possible noncompliance with a NERC reliability standard will not be identified in the readiness evaluation report.
4. Upon completion of the on-site evaluation, the team shall make a presentation to the evaluated entity of preliminary findings and recommendations that will be included in the final report.

707. Preparation and Posting of the Final Report

1. The evaluation team leaders shall prepare a draft report. The report will be sent to the team for review, within a period of time after the evaluation specified by NERC.
2. The evaluation team shall have a period of time specified by NERC to respond to the draft report. If a team member does not respond within the allotted time, such non-response shall be considered agreement with the contents of the report.
3. The draft report shall then be sent to the evaluated entity for its review to ensure that there are no factual errors in the report. The entity shall respond within a period of time specified by NERC. If the entity does not respond within the specified time, such non-response shall be considered agreement with the content of the report. The entity may provide feedback in the form of corrections and clarifications that will be considered by the evaluation team for inclusion in the final report.
4. After agreeing on any final corrections, the evaluation team may elect to provide the evaluated entity the opportunity to review the changes if deemed significant. The team shall then post the final report on the NERC Web site within a period of time from the on-site evaluation specified by NERC. Information deemed to be confidential information shall be redacted prior to posting. The entity will make the determination about what information will be redacted.
5. Should the entity wish to provide comments regarding the final report, evaluation processes, or findings, the entity may provide a statement in writing that will be posted on the NERC Web site in conjunction with the final report.
6. In response to the posted evaluation report and within a period of time after the posting specified by NERC, the entity shall provide a response plan to NERC addressing the report recommendations, including a timeline for implementation. The response plan shall be published on the NERC Web site when submitted by the entity. If the entity requests, NERC will offer assistance in developing a suitable response plan to address the report's recommendations. The entity shall notify NERC of its request for assistance.
7. NERC may direct that a mid-cycle follow-up evaluation be scheduled

708. Monitoring Recommendation Implementation

1. Evaluated entities may implement actions based on the recommendation or may review the recommendation and determine that no action is warranted or necessary and provide documentation on their decisions as well as the response plan.
2. NERC shall monitor the evaluated entity's implementation of the recommendations in the final report and the entity's response plan, and shall

report progress to the board. NERC may elect to use the regional entities to coordinate the request for updated recommendation status for members within its area of oversight.

709. Examples of Excellence

NERC shall identify and publish examples of excellence identified during the course of readiness evaluations. “Examples of excellence” are practices utilized by owners, operators and users of the bulk power system that are identified as being exceptionally effective in ensuring and protecting the reliability of the bulk power system. These “examples of excellence” may be identified through a readiness evaluation or submitted to NERC for an on-site evaluation.

710. Confidentiality Requirements for Readiness Evaluations and Evaluation Team Members

1. All information made available or created during the course of the evaluation including, but not limited to, data, documents, observations and notes, shall be maintained as confidential by all evaluation team members, in accordance with the requirements of Section 1500.
2. Evaluation team members are obligated to destroy all confidential evaluation notes following the posting of the final report.
3. NERC will retain evaluation-related documentation, notes, and materials for a period of time as defined by NERC.

711. Independent Audit of the Reliability Readiness Evaluation and Improvement Program

1. NERC shall provide for an independent audit of its reliability readiness evaluation and improvement program at least once every three years or more frequently as determined by the board. The audit shall be conducted by independent expert auditors as selected by the board.
2. The audit shall evaluate the success and effectiveness of the NERC reliability readiness evaluation and improvement program in achieving its mission.
3. If the audit report includes recommendations to improve the reliability readiness evaluation and improvement program, the administrators of the program shall provide a written response and plan to the board within 30 days of the final report.
4. The final report shall be posted by NERC for public viewing on its Web site. Confidential information shall be redacted according to NERC procedures and not released publicly.

712. Formation of Sector Forum

1. NERC will form a sector forum at the request of any five members of NERC that share a common interest in the safety and reliability of the bulk power system.

The members of sector forum may invite such others of the members of NERC to join the sector forum as the sector forum deems appropriate.

2. The request to form a sector forum must include a proposed charter for the sector forum. The board must approve the charter.
3. NERC will provide notification of the formation of a sector forum to its membership roster. Notices and agendas of meetings shall be posted on NERC's Web site.
4. A sector forum may make recommendations to any of the NERC committees and may submit a standards authorization request to the NERC *Reliability Standards Development Procedure*.

SECTION 800 — RELIABILITY ASSESSMENT AND PERFORMANCE ANALYSIS

801. Objectives of the Reliability Assessment and Performance Analysis Program

The objectives of the NERC reliability assessment and performance analysis program are to: (1) conduct, and report the results of, an independent assessment of the overall reliability and adequacy of the interconnected North American bulk power systems, both as existing and as planned; (2) analyze off-normal events on the bulk power system; (3) identify the root causes of events that may be precursors of potentially more serious events; (4) assess past reliability performance for lessons learned; (5) disseminate findings and lessons learned to the electric industry to improve reliability performance; and (6) develop reliability performance benchmarks. The final reliability assessment reports shall be approved by the board for publication to the electric industry and the general public.

802. Scope of the Reliability Assessment Program

1. The scope of the reliability assessment program shall include:
 - 1.1 Review, assess, and report on the overall electric generation and transmission reliability (adequacy and operating reliability) of the interconnected bulk power systems, both existing and as planned.
 - 1.2 Assess and report on the key issues, risks, and uncertainties that affect or have the potential to affect the reliability of existing and future electric supply and transmission.
 - 1.3 Review, analyze, and report on regional self-assessments of electric supply and bulk power transmission reliability, including reliability issues of specific regional concern.
 - 1.4 Identify, analyze, and project trends in electric customer demand, supply, and transmission and their impacts on bulk power system reliability.
 - 1.5 Investigate, assess, and report on the potential impacts of new and evolving electricity market practices, new or proposed regulatory procedures, and new or proposed legislation (e.g. environmental requirements) on the adequacy and operating reliability of the bulk power systems.
2. The reliability assessment program shall be performed in a manner consistent with the reliability standards of NERC including but not limited to those that specify reliability assessment requirements.

803. Reliability Assessment Reports

The number and type of periodic assessments that are to be conducted shall be at the discretion of NERC. The results of the reliability assessments shall be documented in three reports: the long-term and the annual seasonal (summer) and the annual seasonal (winter) assessment reports. NERC shall also conduct special reliability assessments from time to time as circumstances warrant. The reliability assessment reports shall be reviewed and approved for publication by the board. The three regular reports are described below.

1. **Long-Term Reliability Assessment Report** — The annual long-term report shall cover a ten-year planning horizon. The planning horizon of the long-term reliability assessment report shall be subject to change at the discretion of NERC. Detailed generation and transmission adequacy assessments shall be conducted for the first five years of the review period. For the second five years of the review period, the assessment shall focus on the identification, analysis, and projection of trends in peak demand, electric supply, and transmission adequacy, as well as other industry trends and developments that may impact future electric system reliability. Reliability issues of concern and their potential impacts shall be presented along with any mitigation plans or alternatives. The long-term reliability assessment reports will generally be published in the fall (September) of each year. NERC will also publish electricity supply and demand data associated with the long-term reliability assessment report.
2. **Summer Assessment Report** — The annual summer seasonal assessment report typically shall cover the four-month (June–September) summer period. It shall provide an overall perspective on the adequacy of the generation resources and the transmission systems necessary to meet projected summer peak demands. It shall also identify reliability issues of interest and regional and subregional areas of concern in meeting projected customer demands and may include possible mitigation alternatives. The report will generally be published in mid-May for the upcoming summer period.
3. **Winter Assessment Report** — The annual winter seasonal assessment report shall cover the three-month (December–February) winter period. The report shall provide an overall perspective on the adequacy of the generation resources and the transmission systems necessary to meet projected winter peak demands. Similar to the summer assessment, the winter assessment shall identify reliability issues of interest and regional and subregional areas of concern in meeting projected customer demands and may also include possible mitigation alternatives. The winter assessment report will generally be published in mid-November for the upcoming winter period.
4. **Special Reliability Assessment Reports** — In addition to the long-term and seasonal reliability assessment reports, NERC shall also conduct special reliability assessments on a regional, interregional, and interconnection basis as conditions warrant, or as requested by the board or applicable governmental authorities. The teams of reliability and technical experts also may initiate special assessments of

key reliability issues and their impacts on the reliability of a regions, subregions, or interconnection (or a portion thereof). Such special reliability assessments may include, among other things, operational reliability assessments, evaluations of emergency response preparedness, adequacy of fuel supply, hydro conditions, reliability impacts of new or proposed environmental rules and regulations, and reliability impacts of new or proposed legislation that affects or has the potential to affect the reliability of the interconnected bulk power systems in North America.

804. Reliability Assessment Data and Information Requirements

To carry out the reviews and assessments of the overall reliability of the interconnected bulk power systems, the regional entities, regional reliability organizations and other entities shall provide sufficient data and other information requested by NERC in support of the annual long-term and seasonal assessments and any special reliability assessments.

Some of the data provided for these reviews and assessment may be considered confidential from a competitive marketing perspective, a critical energy infrastructure information perspective, or for other purposes. Such data shall be treated in accordance with the provisions of Section 1500 – Confidential Information.

While the major sources of data and information for this program are the regional entities and regional reliability organizations, a team of reliability and technical experts is responsible for developing and formulating its own independent conclusions about the near-term and long-term reliability of the bulk power systems.

In connection with the reliability assessment reports, requests shall be submitted to each of the regional entities or regional reliability organizations for required reliability assessment data and other information, and for each region's self-assessment report. The timing of the requests will be governed by the schedule for the preparation of the assessment reports.

The regional self-assessments are to be conducted in compliance with NERC standards and the respective regional planning criteria. The team(s) of reliability and technical experts shall also conduct interviews with the regional entities or regional reliability organizations as needed. The summary of the regional self-assessments that are to be included in the assessment reports shall follow the general outline identified in NERC's request. This outline may change from time to time as key reliability issues change.

In general, the regional reliability self-assessments shall address, among other areas, the following topics: demand and net energy for load; assessment of projected resource adequacy; any transmission constraints that may impact bulk transmission adequacy and plans to alleviate those constraints; any unusual operating conditions that could impact reliability for the assessment period; fuel supply adequacy; the deliverability of generation (both internal and external) to load; and any other reliability issues in the region and their potential impacts on the reliability of the bulk power systems.

805. Reliability Assessment Process

Based on their expertise, the review of the collected data, the review of the regional self-assessment reports, and interviews with the regional entities or regional reliability organizations, as appropriate, the teams of reliability and technical experts shall perform an independent review and assessment of the generation and transmission adequacy of each region's existing and planned bulk power system. The results of the review teams shall form the basis of NERC's long-term and seasonal reliability assessment reports. The review and assessment process is briefly summarized below.

1. **Resource Adequacy Assessment** — The teams shall evaluate the regional demand and resource capacity data for completeness in the context of the overall resource capacity needs of the region. The team shall independently evaluate the ability of the regional entity or regional reliability organization members to serve their obligations given the demand growth projections, the amount of existing and planned capacity, including committed and uncommitted capacity, contracted capacity, or capacity outside of the region. If the region relies on capacity from outside of the region to meet its resource objectives, the ability to deliver that capacity shall be factored into the assessment. The demand and resource capacity information shall be compared to the resource adequacy requirements of the regional entity or regional reliability organization for the year(s) or season(s) being assessed. The assessment shall determine if the resource information submitted represents a reasonable and attainable plan for the regional entity or regional reliability organization and its members. For cases of inadequate capacity or reserve margin, the regional entity or regional reliability organization will be requested to analyze and explain any resource capacity inadequacies and its plans to mitigate the reliability impact of the potential inadequacies. The analysis may be expanded to include surrounding areas. If the expanded analysis indicates further inadequacies, then an interregional problem may exist and will be explored with the applicable regions. The results of these analyses shall be described in the assessment report.
2. **Transmission Adequacy and Operating Reliability Assessment** — The teams shall evaluate transmission system information that relates to the adequacy and operating reliability of the regional transmission system. That information shall include: regional planning study reports, interregional planning study reports, and/or regional operational study reports. If additional information is required, another data request shall be sent to the regional entity or regional reliability organization. The assessment shall provide a judgment on the ability of the regional transmission system to operate reliably under the expected range of operating conditions over the assessment period as required by NERC reliability standards. If sub-areas of the regional system are especially critical to the reliable operation of the regional bulk transmission system, these facilities or sub-areas shall be reviewed and addressed in the assessment. Any areas of concern related to the adequacy or operating reliability of the system shall be identified and reported in the assessment.

3. **Seasonal Operating Reliability Assessment** — The team(s) shall evaluate the overall operating reliability of the regional bulk transmission systems. In areas with potential resource adequacy or system operating reliability problems, operational readiness of the affected regional reliability organizations for the upcoming season shall be reviewed and analyzed. The assessment may consider unusual but possible operating scenarios and how the system is expected to perform. Operating reliability shall take into account a wide range of activities, all of which should reinforce the regional entity's or regional reliability organization's ability to deal with the situations that might occur during the upcoming season. Typical activities in the assessment may include: facility modifications and additions, new or modified operating procedures, emergency procedures enhancement, and planning and operating studies. The teams shall report the overall seasonal operating reliability of the regional transmission systems in the annual summer and winter assessment reports.

4. **Reporting of Reliability Assessment Results** — The teams of reliability and technical experts shall provide an independent assessment of the reliability of the regional entities, regional reliability organizations and the North American interconnected bulk power system for the period of the assessment. While the regional entities or regional reliability organizations are relied upon to provide the information to perform such assessments, the review team is not required to accept the conclusions provided by the regional entities or regional reliability organizations. Instead, the review team is expected, based on their expertise, to reach their own independent conclusions about the status of the adequacy of the generation and bulk power transmission systems of North America.

The review team also shall strive to achieve consensus in their assessments. The assessments that are made are based on the best information available at the time. However, since judgment is applied to this information, legitimate differences of opinion can develop. Despite these differences, the review team shall work to achieve consensus on their findings.

In addition to providing long-term and seasonal assessments in connection with the reliability assessment program, the review team of experts shall also be responsible for recommending new and revised reliability standards related to the reliability assessments and the reliability of the bulk power systems. These proposals for new or revised standards shall be entered into NERC's Standards Development Process.

Upon completion of the assessment, the team shall share the results with the regional entities or regional reliability organizations. The regional entities or regional reliability organizations shall be given the opportunity to review and comment on the conclusions in the assessment and to provide additional information as appropriate. The reliability assessments and their conclusions are the responsibility of NERC's technical review team and NERC.

The preparation and approval of NERC's reliability assessment reports shall follow a prescribed schedule including review, comment, and possible approval

by appropriate NERC committees. The long-term and seasonal (summer and winter) reliability assessment reports shall be further reviewed for approval by the board for publication to the electric industry.

806. Scope of the Reliability Performance and Analysis Program

The components of the program will include analysis of large-scale outages, disturbances, and near misses to determine root causes and lessons learned; identification and continuous monitoring of performance indices to detect emerging trends and signs of a decline in reliability performance; and communications of performance results, trends, recommendations, and initiatives to those responsible to take actions; followed with confirmation of actions to correct any deficiencies identified. Within NERC, the reliability performance program will provide performance results to the standards development, compliance enforcement, and reliability readiness programs to make the necessary adjustments to preserve reliability based on a risk-based approach. Recommendations that result from this program are reviewed as part of the NERC readiness evaluation and improvement program.

807. Analysis of Major Events

Responding to major blackouts and other system disturbances or emergencies can be divided into four phases: situational assessment and communications; situation tracking and communications; data collection, investigation, analysis, and reporting; and follow-up on recommendations.

1. NERC's role following a blackout or other major bulk power system disturbance or emergency is to provide leadership, coordination, technical expertise, and assistance to the industry in responding to the event. Working closely with the regional entities and reliability coordinators, NERC will coordinate and facilitate efforts among industry participants, and with state, federal, and provincial governments in the United States and Canada to support the industry's response.
2. When responding to any event where physical or cyber security is suspected as a cause or contributing factor to an event, NERC will immediately notify appropriate government agencies and coordinate its activities with them.
3. During the conduct of some NERC analyses, assistance may be needed from government agencies. This assistance could include: authority to require data reporting from affected or involved parties; communications with other agencies of government; investigations related to possible criminal or terrorist involvement in the event; resources for initial data gathering immediately after the event; authority to call meetings of affected or involved parties; and technical and analytical resources for studies.
4. NERC shall work with other participants to establish a clear delineation of roles, responsibilities, and coordination requirements among industry and government for the investigation and reporting of findings, conclusions, and recommendations related to major blackouts, disturbances, or other emergencies affecting the bulk power system with the objective of avoiding, to the extent possible, multiple

investigations of the same event. If the event is confined to a single regional entity, NERC representatives will participate as members of the regional entity analysis team.

5. NERC and applicable entity(s) shall apply the NERC *Blackout and Disturbance Response Procedures*, which are incorporated into these rules as **Appendix 8**. These procedures provide a framework to guide NERC's response to events that may have multiregional, national, or international implications. Experienced industry leadership shall be applied to tailor the response to the specific circumstances of the event. In accordance with that procedure, the NERC president will determine whether the event warrants analysis at the NERC-level. A regional entity may request that NERC elevate any analysis to a NERC level.
6. NERC will screen and analyze the findings and recommendations from the analysis, and those with generic applicability will be disseminated to the industry in the form of operations or equipment alerts of three possible types:
 - a. Advisory — these alerts are purely informational, intended to alert owners, operators, and users of the bulk power system to potential problems;
 - b. Recommendation — these alerts are intended to recommend specific action be taken by owners, operators, and users of the bulk power system;
 - c. Required Action — these alerts are intended to require specific action by owners, operators, and users of the bulk power system. Such alerts require NERC board approval before issuance.

808. Analysis of Off-Normal Events and System Performance

1. NERC shall analyze system and equipment performance events that do not rise to the level of a major blackout, disturbance, or system emergency, as described in section 807. The purpose of these analyses is to identify the root causes of events that may be precursors of potentially more serious events, to assess past reliability performance for lessons learned, and to develop reliability performance benchmarks and trends.
2. NERC will screen and analyze events for significance, and information from those with generic applicability will be disseminated to the industry in the form of operations or equipment alerts of three possible types:
 - a. Advisory — these alerts are purely informational, intended to alert owners, operators, and users of the bulk power system to potential problems;
 - b. Recommendation — these alerts are intended to recommend specific action be taken by owners, operators, and users of the bulk power system;
 - c. Required Action — these alerts are intended to require specific action by owners, operators, and users of the bulk power system. Such alerts require NERC board approval before issuance.

3. Members of NERC and bulk power systems owners, operators, and users shall provide NERC with detailed and timely operating experience information and data, and shall evaluate and take appropriate action on alerts issued by NERC.

809. Reliability Benchmarking

NERC shall identify and track key reliability indicators as a means of benchmarking reliability performance and measuring reliability improvements. This program will include assessing available metrics, developing guidelines for acceptable metrics, maintaining a performance metrics “dashboard” on the NERC Web site, and developing appropriate reliability performance benchmarks.

810. Information Exchange

NERC shall disseminate the results of its events analysis findings and lessons learned to the industry. Recommendations that result from this program will be reviewed as part of the readiness evaluation and improvement program and also be used to guide the reliability assessment program.

811. Equipment Performance Data

Through its Generating Availability Data System (GADS), NERC shall collect operating information about the performance of electric generating equipment; provide assistance to those researching information on power plant outages stored in its database; and support equipment reliability as well as availability analyses and other decision-making processes developed by GADS subscribers. GADS data is also used in conducting assessments of generation resource adequacy.

SECTION 900 — TRAINING AND EDUCATION

901. Scope of the Training and Education Program

Maintaining the reliability of the bulk electric system through implementation of the Reliability Standards requires informed and trained personnel. The training and education program will provide the education and training necessary for bulk power system personnel and regulators to obtain the essential knowledge necessary to understand and operate the bulk electric system.

NERC shall develop and maintain training and education programs for the purpose of establishing training requirements, developing materials, and developing training activities. The target audience of the training and education programs shall be bulk power system operating personnel including system operations personnel, operations support personnel (engineering and information technology), supervisors and managers, training personnel, and other personnel directly responsible for complying with NERC reliability standards who, through their actions or inactions, may impact the real-time, or day-ahead reliability of the bulk power system.

NERC shall also develop and provide appropriate training and education for industry participants and regulators affected by new or changed reliability standards or compliance requirements.

To accomplish those objectives:

1. NERC shall periodically conduct job task analyses for targeted bulk power system personnel to ensure that the training program content is properly aligned to the job tasks performed by those personnel.
2. NERC shall develop and maintain personnel training program curriculum requirements based on valid job-task analysis.
3. NERC shall periodically conduct performance surveys to determine the effectiveness of the training program and identify areas for further training development and improvement.
4. NERC shall develop training and education materials and activities to assist bulk power system entities implementing new or revised reliability standard requirements or other NERC-related changes.
5. NERC shall develop and provide training to people who participate in NERC and regional entity evaluations, audits, and investigations for the compliance enforcement program, organization certification program, reliability readiness evaluation program, and the continuing education program.

902. Continuing Education Program

NERC shall develop and maintain a continuing education program to foster the improvement of training and to promote quality in the training programs used by and

implemented by bulk power system entities. The program shall approve or accredit those activities and entities meeting NERC continuing education requirements.

1. NERC shall develop and implement continuing education program requirements that promote excellence in training programs and advance improved performance for bulk system personnel identified in Section 901.
2. NERC shall develop and maintain a process to approve or accredit continuing education providers and activities seeking approval or accreditation and meeting NERC-approved continuing education requirements.
3. NERC shall perform periodic audits on continuing education providers and training activities to ensure that the approved or accredited providers and training activities satisfy NERC continuing education requirements.
4. NERC shall develop and maintain an appeals process for disputed application reviews, interpretations of guidelines and standards, probation or suspension of NERC-approved provider status, or continuing education hour disputes.

SECTION 1000 — SITUATION AWARENESS AND INFRASTRUCTURE SECURITY

1001. Situation Awareness

NERC shall through the use of reliability coordinators and available tools, monitor present conditions on the bulk power system and provide leadership coordination, technical expertise, and assistance to the industry in responding to events as necessary. To accomplish these goals, NERC will:

1. Maintain real-time situation awareness of conditions on the bulk power system;
2. Notify the industry of significant bulk power system events that have occurred in one area, and which have the potential to impact reliability in other areas;
3. Maintain and strengthen high-level communication, coordination, and cooperation with governments and government agencies regarding real-time conditions; and
4. Enable the reliable operation of interconnected bulk power systems by facilitating information exchange and coordination among reliability service organizations.

1002. Reliability Support Services

NERC will provide tools and other support services for the benefit of reliability coordinators and other system operators, including the Area Control Error (ACE) and Frequency Monitoring System, NERC Hotline, Real-time Flows, System Data Exchange (SDX), Reliability Coordinator Information System (RCIS), Transmission Services Information Network (TSIN), Interchange Distribution Calculator (IDC), Interregional Security Network (ISN), and Central Repository for Security Events (CRC). To accomplish this goal, NERC will:

1. Maintain the reliability and effectiveness of all mission-critical operating reliability support systems and services;
2. Continue to support maintenance of a transmission provider curtailment report on the CRC site in response to Federal Energy Regulatory Commission Order 605;
3. Investigate and analyze the use of high-speed real-time system measurements, including phasors, in predicting the behavior and performance of the Eastern Interconnection; and
4. Facilitate real-time voice and data exchange services among reliability coordinators (e.g., Hotline, Interregional Security Network, NERCnet, System Data Exchange, etc.).

1003. Infrastructure Security Program

NERC shall coordinate electric industry activities to promote critical infrastructure protection of the bulk power system in North America by taking a leadership role in critical infrastructure protection of the electricity sector so as to reduce vulnerability and

improve mitigation and protection of the electricity sector's critical infrastructure. To accomplish these goals, NERC shall perform the following functions.

1. Electric Sector Information Sharing and Analysis Center (ESISAC)
 - 1.1 NERC shall serve as the electricity sector's Sector Coordinator and operate its Information Sharing and Analysis Center to gather information and communicate security-related threats and incidents within the sector, with United States and Canadian government agencies, and with other critical infrastructure sectors.
 - 1.2 NERC shall improve the capability of the ESISAC to analyze security threats and incident information and provide situational assessments for the electricity sector and governments.
 - 1.3 NERC shall work closely with the United States Department of Homeland Security, Department of Energy, Natural Resources Canada, and Public Safety and Emergency Preparedness Canada.
 - 1.4 NERC shall strengthen and expand these functions and working relationships with the electricity sector, other critical infrastructure industries, governments, and government agencies throughout North America to ensure the protection of the infrastructure of the bulk power system.
 - 1.5 NERC shall fill the role of the Electricity Sector Coordinating Council and coordinate with the Government Coordinating Council.
 - 1.6 NERC shall coordinate with other critical infrastructure sectors through active participation with the other Sector Coordinating Councils, the other ISACs, and the National Infrastructure Advisory Committee.
 - 1.7 NERC shall encourage and participate in coordinated critical infrastructure protection exercises, including interdependencies with other critical infrastructure sectors.
2. Security Planning
 - 2.1 NERC shall take a risk management approach to critical infrastructure protection, considering probability and severity, and recognizing that mitigation and recovery can be practical alternatives to prevention.
 - 2.2 NERC shall keep abreast of the changing threat environment through collaboration with government agencies.
 - 2.3 NERC shall develop criteria to identify critical physical and cyber assets, assess security threats, identify risk assessment methodologies, and assess effectiveness of physical and cyber protection measures.

- 2.4 NERC shall enhance and maintain the bulk power system critical spare transformer program, encourage increased participation by asset owners, and continue to assess the need to expand this program to include other critical bulk power system equipment.
- 2.5 NERC shall support implementation of the Cyber Security Standard through education and outreach.
- 2.6 NERC shall review and improve existing Security Guidelines, develop new Security Guidelines to meet the needs of the electricity sector, and consider whether any guidelines should be developed into standards.
- 2.7 NERC shall conduct education and outreach initiatives to increase awareness and respond to the needs of the electricity sector.
- 2.8 NERC shall strengthen relationships with federal, state, and provincial government agencies on critical infrastructure protection matters.
- 2.9 NERC shall maintain and improve mechanisms for the sharing of sensitive or classified information with federal, state, and provincial government agencies on critical infrastructure protection matters; work with DOE and DHS to implement the National Infrastructure Protection Plan, as applicable to the electricity sector; and coordinate this work with PSEPC.
- 2.10 NERC shall improve methods to better assess the impact of a possible physical attack on the bulk power system and means to deter, mitigate, and respond following an attack.
- 2.11 NERC shall assess the results of vulnerability assessments and enhance the security of System Control and Data Acquisition (SCADA) and process control systems by developing methods to detect an emerging cyber attack and the means to mitigate impacts on the bulk power systems.
- 2.12 NERC shall work with the National SCADA Test Bed and the Process Control Systems Forum to accelerate the development of technology that will enhance the security, safety, and reliability of process control and SCADA systems.

SECTION 1100 — ANNUAL NERC BUSINESS PLANS AND BUDGETS

1101. Scope of Business Plans and Budgets

The board shall determine the content of the budgets to be submitted to the applicable ERO governmental authorities with consultation from the members of the Members Representatives Committee, regional entities, and others in accordance with the bylaws. The board shall identify any activities outside the scope of NERC's statutory reliability functions, if any, and the appropriate funding mechanisms for those activities.

1102. NERC Funding and Cost Allocation

1. In order that NERC's costs shall be fairly allocated among interconnections and among regional entities, the NERC funding mechanism for all statutory functions shall be based on net energy for load (NEL).
2. NERC's costs shall be allocated so that all load (or, in the case of costs for an interconnection or regional entity, all load within that interconnection or regional entity) bears an equitable share of such costs based on NEL.
3. Costs shall be equitably allocated between countries or regional entities thereof for which NERC has been designated or recognized as the electric reliability authority.
4. Costs incurred to accomplish the statutory functions for one interconnection, regional entity, or group of entities will be directly assigned to that interconnection, regional entity, or group of entities provided that such costs are allocated equitably to end-users based on net energy for load.

1103. NERC Budget Development

1. The NERC annual budget process shall be initiated in March of each calendar year thereby allowing a sufficient amount of time for NERC to receive member inputs, develop the budget, and receive board and, where authorized by applicable legislation or agreement, ERO governmental authority approval of the NERC budget for the following fiscal year.
2. The NERC budget submittal to ERO governmental authorities shall include provisions for all ERO functions, all regional entity delegated functions as specified in delegation agreements and reasonable reserves and contingencies.
3. The NERC annual budget submittal to ERO governmental authorities shall include the following information: (1) budget component justification based on statutory or other authorities; (2) how the budgeted activity lends itself to the accomplishment of the statutory or other authorities; (3) methods of calculating budget estimates; (4) who prioritizes competing needs; (5) how the budget meets the objectives of affordability, sustainability, and efficiency and effectiveness of

expenditures; (6) implementation to meet international standards; (7) transparency; and (8) accountability and execution in accordance with operating plan, performance measures, and shifting priorities.

4. NERC shall develop, in consultation with the regional entities, a reasonable and consistent system of accounts, to allow a meaningful comparison of actual results at the NERC and regional entity level by the applicable ERO governmental authorities.

1104. Submittal of Regional Entity Budgets to NERC

1. Each regional entity shall submit its annual budget for carrying out its delegated authority functions as well as all other activities and funding to NERC no later than June 1 of the prior year, together with supporting materials including the regional entity's complete business plan and organization chart, explaining the proposed collection of all dues, fees, and charges and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures.
2. NERC shall review and approve each regional entity's budget for meeting the requirements of its delegated authority. Concurrent with approving the NERC budget, NERC shall review and approve, or reject, each regional entity budget for filing.
3. NERC shall also have the right to review from time to time, in reasonable intervals but no less frequently than every three years, the financial books and records of each regional entity having delegated authority in order to ensure that the documentation fairly represents in all material respects appropriate funding of delegated functions.

1105. Submittal of NERC and Regional Entity Budgets to Governmental Authorities for Approval

1. NERC shall file for approval by the applicable ERO governmental authorities at least 130 days in advance of the start of each fiscal year. The filing shall include: (1) the complete NERC and regional entity budgets including the business plans and organizational charts approved by the board, (2) NERC's annual funding requirement (including regional entity costs for delegated functions), (3) the previous year's audited financial statements, and (4) the mechanism for assessing charges to recover that annual funding requirement, together with supporting materials in sufficient detail to support the requested funding requirement.
2. NERC shall seek approval from each governmental authority requiring such approval for the funding requirements necessary to perform ERO activities within their jurisdictions.

1106. NERC and Regional Entity Billing and Collections

1. NERC shall request the regional entities to identify all load-serving entities³ within each regional entity and the NEL assigned to each load-serving entity, and the regional entities shall supply the requested information. The assignment of a funding requirement to an entity shall not be the basis for determining that the entity must be registered in the compliance registry.
2. NERC shall accumulate the NEL by load-serving entities for each ERO governmental authority and submit the proportional share of NERC funding requirements to each ERO governmental authority for approval together with supporting materials in sufficient detail to support the requested funding requirement.
3. NEL reported by balancing authorities within a region shall be used to rationalize and validate amounts allocated for collection through regional entity or regional reliability organization processes.
4. The billing and collection processes shall provide:
 - 4.1 A clear validation of billing and application of payments.
 - 4.2 A minimum of data requests to those being billed.
 - 4.3 Adequate controls to ensure integrity in the billing determinants including identification of entities responsible for funding NERC's activities.
 - 4.4 Consistent billing and collection terms.
5. NERC will bill and collect all budget requirements approved by applicable ERO governmental authorities (including the funds required to support those functions assigned to the regional entities through the delegation agreements) directly from the load-serving entities or their designees or as directed by particular ERO governmental authorities, except where the regional entity is required to collect the budget requirements for NERC, in which case the regional entity will collect directly from the load-serving entities or as otherwise provided by agreement and submit funds to NERC. Alternatively, a load-serving entity may pay its allocated ERO costs through a regional entity managed collection mechanism.
6. NERC shall set a minimum threshold limit on the billing of small LSEs to minimize the administrative burden of collection.
7. NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

³ A regional entity shall allocate funding obligations using a NERC-approved alternative method, as stated in the regional delegation agreement.

8. In the case where a Regional Entity performs the collection for ERO, the Regional Entity will not be responsible for non-payment in the event that a user, owner or operator of the Bulk Power System does not pay its share of dues, fees and charges in a timely manner, provided that such a Regional Entity shall use reasonably diligent efforts to collect dues, fees, and other charges from all entities obligated to pay them. However, any revenues not paid shall be recovered from others within the same region to avoid cross-subsidization between regions.
9. Both NERC and the regional entities also may bill members or others for functions and services not within statutory requirements or otherwise authorized by the appropriate governmental authorities. Costs and revenues associated with these functions and services shall be separately identified and not commingled with billings associated with the funding of NERC or of the regional entities for delegated activities.

1107. Penalty Applications

1. Where NERC or a regional entity initiates an investigation that leads to imposition of a penalty, the entity that initiated the investigation shall receive any penalty monies imposed and collected as a result of that investigation.
2. All funds from financial penalties assessed in the United States received by the entity initiating the investigation shall be applied as a general offset to the entity's budget requirements for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Funds from financial penalties assessed against a Canadian entity shall be applied as specified by legislation or agreement.
3. In the event that an investigation is performed jointly by NERC and a regional entity, the regional entity shall receive the penalty monies and offset the entity's budget requirements for the subsequent fiscal year.
4. Exceptions to the policy due to statutory or regulatory restrictions will be considered on a case-by-case basis.

1108. Special Assessments

On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next funding cycle, NERC shall file with the applicable ERO governmental authorities, where authorized by applicable legislation or agreement, for authorization to collect a special assessment for statutory functions. Such filing shall include supporting materials to justify the requested funding, including any departure from the approved funding formula or method.

SECTION 1200 — REGIONAL DELEGATION AGREEMENTS

1201. Pro Forma Regional Delegation Agreement

NERC shall develop and maintain a pro forma regional entity delegation agreement, which shall serve as the basis for negotiation of consistent agreements for the delegation of ERO functions to regional entities.

1202. Regional Entity Essential Requirements

NERC shall establish the essential requirements for an entity to become qualified and maintain good standing as a regional entity.

1203. Negotiation of Regional Delegation Agreements

NERC shall, for all areas of North America that have provided NERC with the appropriate authority, negotiate regional delegation agreements for the purpose of ensuring all areas of the North American bulk power systems are within a regional entity area. In the event NERC is unable to reach agreement with regional entities for all areas, NERC shall provide alternative means and resources for implementing NERC functions within those areas. No delegation agreement shall take effect until it has been approved by the appropriate ERO governmental authority.

1204. Conformance to Rules and Terms of Regional Delegation Agreements

NERC and each regional entity shall comply with all applicable ERO rules of procedure and the obligations stated in the regional delegation agreement.

1205. Sub-delegation

The regional entity shall not sub-delegate any responsibilities and authorities delegated to it by its regional delegation agreement with NERC.

1206. Nonconformance to Rules or Terms of Regional Delegation Agreement

If a regional entity is unable to comply or is not in compliance with an ERO rule of procedure or the terms of the regional delegation agreement, the regional entity shall immediately notify NERC in writing, describing the area of nonconformance and the reason for not being able to conform to the rule. NERC shall evaluate each case and inform the affected regional entity of the results of the evaluation. If NERC determines that a rule or term of the regional delegation agreement has been violated by an entity or cannot practically be implemented by an entity, NERC shall notify the applicable ERO governmental authorities and take any actions necessary to address the situation.

1207. Regional Entity Audits

Approximately every three years and more frequently if necessary for cause, NERC shall audit each regional entity to verify that the regional entity continues to comply with NERC rules of procedure and the obligations of NERC delegation agreement.

SECTION 1300 — COMMITTEES

1301. Establishing Standing Committees

The board may from time to time create standing committees. In doing so, the board shall approve the charter of each committee and assign specific authority to each committee necessary to conduct business within that charter. Each standing committee shall work within its board-approved charter and shall be accountable to the board for performance of its board-assigned responsibilities. A NERC standing committee may not delegate its assigned work to a member forum, but, in its deliberations, may request the opinions of and consider the recommendations of a member forum.

1302. Committee Membership

Each committee shall have a defined membership composition that is explained in its charter. Committee membership may be unique to each committee, and can provide for balanced decision-making by providing for representatives from each sector or, where sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area, by bringing together a wide diversity of opinions from industry experts with outstanding technical knowledge and experience in a particular subject area. Committee membership shall also provide the opportunity for an equitable number of members from the United States and Canada, based approximately on proportionate net energy for load. All committees and other subgroups (except for those organized on other than a sector basis because sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area) must ensure that no two stakeholder sectors are able to control the vote on any matter, and no single sector is able to defeat a matter. With regard to committees and subgroups pertaining to development of, interpretation of, or compliance with standards, NERC shall provide a reasonable opportunity for membership from sectors desiring to participate. Committees and subgroups organized on other than a sector basis shall be reported to the NERC board and the Member Representatives Committee, along with the reasons for constituting the committee or subgroup in the manner chosen. In such cases and subject to reasonable restrictions necessary to accomplish the mission of such committee or subgroup, NERC shall provide a reasonable opportunity for additional participation, as members or official observers, for sectors not represented on the committee or subgroup.

1303. Procedures for Appointing Committee Members

Committee members shall be nominated and selected in a manner that is open, inclusive, and fair. Unless otherwise stated in these rules or approved by the board, all committee member appointments shall be approved by the board, and committee officers shall be appointed by the Chairman of the Board.

1304. Procedures for Conduct of Committee Business

1. Notice to the public of the dates, places, and times of meetings of all committees, and all nonconfidential material provided to committee members, shall be posted

on the Corporation's Web site at approximately the same time that notice is given to committee members. Meetings of all standing committees shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided that the meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including but not limited to personnel matters, compliance enforcement matters, litigation, or commercially sensitive or critical infrastructure information of any entity.

2. NERC shall maintain a set of procedures, approved by the board, to guide the conduct of business by standing committees.

1305. Committee Subgroups

Standing committees may appoint subgroups using the same principles as in Section 1302.

SECTION 1400 — AMENDMENTS TO THE NERC RULES OF PROCEDURE

1401. Proposals for Amendment or Repeal of Rules of Procedure

In accordance with the bylaws of NERC, requests to amend or repeal the rules of procedure may be submitted by (1) any ten members of NERC, which number shall include members from at least three membership segments, (2) the Member Representatives Committee, (3) a standing committee of NERC to whose function and purpose the rule pertains, or (4) an officer of the ERO.

1402. Approval of Amendment or Repeal of Rules of Procedure

Amendment to or repeal of rules of procedure shall be approved by the board after public notice and opportunity for comment in accordance with the bylaws of NERC. In approving changes to the rules of procedure, the board shall consider the inputs of the Member Representatives Committee, other ERO committees affected by the particular changes to the rules, and other stakeholders as appropriate. After board approval, the amendment or repeal shall be submitted to the ERO governmental authorities for approval, where authorized by legislation or agreement. No amendment to or repeal of the rules of procedure shall be effective until it has been approved by the applicable ERO governmental authorities.

1403. Alternative Procedure for Violation Risk Factors

In the event the standards development process fails to produce violation risk factors for a particular standard in a timely manner, the Board of Trustees may adopt violation risk factors for that standard after notice and opportunity for comment. In adopting violation risk factors, the board shall consider the inputs of the Member Representatives Committee and affected stakeholders.

SECTION 1500 — CONFIDENTIAL INFORMATION

1501. Definitions

1. **Confidential information** means (i) confidential business and market information; (ii) critical energy infrastructure information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; or (vi) cybersecurity incident information; provided, that public information developed or acquired by an entity shall be excluded from this definition.
2. **Confidential business and market information** means any information that pertains to the interests of any entity, that was developed or acquired by that entity, and that is proprietary or competitively sensitive.
3. **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. Additional guidance is available in *NERC Security Guidelines for the Electricity Sector — Protecting Potentially Sensitive Information*.
4. **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.
5. **Cybersecurity incident information** means any information related to, describing, or which could be used to plan or cause a cybersecurity incident as defined in 18 C.F.R. § 39.1.

1502. Protection of Confidential Information

1. **Identification of Confidential Information** — An owner, operator, or user of the bulk power system and any other party (the “submitting entity”) shall mark as confidential any information that it submits to NERC or a regional entity (the “receiving entity”) that it reasonably believes contains confidential information as defined by these rules, indicating the category or categories defined in Section 1501 in which the information falls. If the information is subject to a prohibition on public disclosure in the Commission-approved rules of a regional transmission organization or independent system operator or a similar prohibition in applicable federal, state, or provincial laws, the submitting entity shall so indicate and provide supporting references and details.

2. **Confidentiality** — Except as provided herein, a receiving entity shall keep in confidence and not copy, disclose, or distribute any confidential information or any part thereof without the permission of the submitting entity, except as otherwise legally required.
3. **Information no longer Confidential** – If a submitting entity concludes that information for which it had sought confidential treatment no longer qualifies for that treatment, the submitting entity shall promptly so notify NERC or the relevant regional entity.

1503. Requests for Information

1. **Limitation** — A receiving entity shall make information available only to one with a demonstrated need for access to the information from the receiving entity.
2. **Form of Request** — A person with such a need may request access to information by using the following procedure:
 - 2.1 The request must be in writing and clearly marked “Request for Information.”
 - 2.2 The request must identify the individual or entity that will use the information, explain the requester’s need for access to the information, explain how the requester will use the information in furtherance of that need, and state whether the information is publicly available or available from another source or through another means. If the requester seeks access to information that is subject to a prohibition on public disclosure in the Commission-approved rules of a regional transmission organization or independent system operator or a similar prohibition in applicable federal, state, or provincial laws, the requester shall describe how it qualifies to receive such information.
 - 2.3 The request must stipulate that, if the requester does not seek public disclosure, the requester will maintain as confidential any information received for which a submitting party has made a claim of confidentiality in accordance with NERC’s rules. As a condition to gaining access to such information, a requester shall execute a non-disclosure agreement in a form approved by NERC’s board of trustees.
3. **Notice and Opportunity for Comment** — Prior to any decision to disclose information marked as confidential, the receiving entity shall provide written notice to the submitting entity and an opportunity for the submitting entity to either waive objection to disclosure or provide comments as to why the confidential information should not be disclosed. Failure to provide such comments or otherwise respond is not deemed waiver of the claim of confidentiality.

4. **Determination by ERO or Regional Entity** — Based on the information provided by the requester under Rule 1503.2, any comments provided by the submitting entity, and any other relevant available information, the chief executive officer or his or her designee of the receiving entity shall determine whether to disclose such information.
5. **Appeal** — A person whose request for information is denied in whole or part may appeal that determination to the President of NERC (or the President’s designee) within 30 days of the determination. Appeals filed pursuant to this Rule must be in writing, addressed to the President of NERC (or the President’s designee), and clearly marked “Appeal of Information Request Denial.”

NERC will provide written notice of such appeal to the submitting entity and an opportunity for the submitting entity to either waive objection to disclosure or provide comments as to why the confidential information should not be disclosed; provided that any such comments must be received within 30 days of the notice and any failure to provide such comments or otherwise respond is not deemed a waiver of the claim of confidentiality.

The President of NERC (or the President’s designee) will make a determination with respect to any appeal within 30 days. In unusual circumstances, this time limit may be extended by the President of NERC (or the President’s designee), who will send written notice to the requester setting forth the reasons for the extension and the date on which a determination on the appeal is expected.

6. **Disclosure of Information** — In the event the receiving entity, after following the procedures herein, determines to disclose information designated as confidential information, it shall provide the submitting entity no fewer than 21 days’ written notice prior to releasing the information in order to enable such submitting entity to (a) seek an appropriate protective order or other remedy, (b) consult with the receiving entity with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Rule. Should a receiving entity be required to disclose confidential information, or should the submitting entity waive objection to disclosure, the receiving entity shall furnish only that portion of the confidential information which the receiving entity’s counsel advises is legally required.
7. **Posting of Determinations on Requests for Disclosure of Confidential Information** — Upon making its determination on a request for disclosure of confidential information, NERC or the regional entity, as applicable, shall (i) notify the requester that the request for disclosure is granted or denied, (ii) publicly post any determination to deny the request to disclose confidential information, including in such posting an explanation of the reasons for the denial (but without in such explanation disclosing the confidential information), and (iii) publicly post any determination that information claimed by the submitting entity to be confidential information is not confidential information (but without in such

posting disclosing any information that has been determined to be confidential information).

1504. Employees, Contractors and Agents

A receiving entity shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom confidential information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

1505. Provision of Information to FERC and Other Governmental Authorities

1. **Request** — A request from FERC for reliability information with respect to owners, operators, and users of the bulk power system within the United States is authorized by Section 215 of the Federal Power Act. Other applicable ERO governmental authorities may have similar authorizing legislation that grants a right of access to such information. Unless otherwise directed by FERC or its staff or the other ERO governmental authority requesting the information, upon receiving such a request, a receiving entity shall provide contemporaneous notice to the applicable submitting entity. In its response to such a request, a receiving entity shall preserve any mark of confidentiality and shall notify FERC or other appropriate governmental authorities that the submitting entity has marked the information as confidential.
2. **Continued Confidentiality** — Each receiving entity shall continue to treat as confidential all confidential information that it has submitted to NERC or to FERC or another appropriate ERO governmental authority, until such time as FERC or the other appropriate ERO governmental authority authorizes disclosure of such information.

1506. Permitted Disclosures

1. **Confirmed Violations** — Nothing in this Section 1500 shall prohibit the disclosure of a violation at the point when the matter is filed with an appropriate governmental authority as a notice of penalty, the “violator” admits to the violation, or the alleged violator and NERC or the regional entity reach a settlement regarding the violation.
2. **Compliance Information** — NERC and the regional entities are authorized to exchange confidential information related to evaluations, audits, and investigations in furtherance of the compliance and enforcement program, on condition they continue to maintain the confidentiality of such information.

1507. Remedies for Improper Disclosure

Any person engaged in NERC or regional entity activity under section 215 of the Federal Power Act or the equivalent laws of other appropriate governmental authorities who improperly discloses information determined to be confidential may lose access to confidential information on a temporary or permanent basis and may be subject to

adverse personnel action, including suspension or termination. Nothing in Section 1500 precludes an entity whose information was improperly disclosed from seeking a remedy in an appropriate court.

Rules of Procedure

Effective: ~~October 18, 2007~~ [\[New Date\]](#)

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SECTION 100 — APPLICABILITY OF RULES OF PROCEDURE

NERC and NERC members shall comply with these rules of procedure. Each regional entity shall comply with these rules of procedure as applicable to functions delegated to the regional entity by NERC or as required by an appropriate governmental authority or as otherwise provided.

Each bulk power system owner, operator, and user shall comply with all rules of procedure of NERC that are made applicable to such entities by approval pursuant to applicable legislation or regulation, or pursuant to agreement.

Any entity that is unable to comply or that is not in compliance with a NERC rule of procedure shall immediately notify NERC in writing, stating the rule of concern and the reason for not being able to comply with the rule.

NERC shall evaluate each case and inform the entity of the results of the evaluation. If NERC determines that a rule has been violated, or cannot practically be complied with, NERC shall notify the applicable governmental authorities and take such other actions as NERC deems appropriate to address the situation.

NERC shall comply with each approved reliability standard that identifies NERC or the electric reliability organization as a responsible entity. Regional Entities shall comply with each approved reliability standard that identifies Regional Entities as responsible entities. A violation by NERC or a Regional Entity of such a reliability standard shall constitute a violation of these Rules of Procedure.

SECTION 200 — DEFINITIONS OF TERMS

201. General

For purposes of NERC rules of procedure, the terms defined in Section 202 shall have the meaning set forth therein. Other terms are defined within particular sections of the rules of procedure. Other terms used but not defined in the rules of procedure shall be defined in NERC's Bylaws, the NERC Glossary of Terms Used in Reliability Standards adopted in conjunction with NERC's Reliability Standards, or in accordance with their commonly understood and used technical meanings in the electric power industry, including applicable codes and standards.

202. Specific Definitions

“Board” means the Board of Trustees of NERC.

“Bulk power system” means facilities and control systems necessary for operating an interconnected electric energy supply and transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

“Canadian” means one of the following: (a) a company or association incorporated or organized under the laws of Canada, or its designated representative(s) irrespective of nationality; (b) an agency of a federal, provincial, or local government in Canada, or its designated representative irrespective(s) of nationality; or (c) a self-representing individual who is a Canadian citizen residing in Canada.

“Confirmed violation” is one for which an entity has: 1) accepted the finding of the violation by a regional entity or NERC and will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.

“Electric reliability organization” or “ERO” means the organization that is certified by the Commission under Section 39.3 of its regulations, the purpose of which is to establish and enforce Reliability Standards for the bulk power system in the United States. The organization may also have received recognition by applicable governmental authorities in Canada and Mexico to establish and enforce reliability standards for the bulk power systems of the respective countries.

“Entity variance” means an aspect of a reliability standard that applies only within a particular entity or a subset of entities within a limited portion of a regional entity, such as a variance that would apply to a regional transmission organization or particular market or to a subset of bulk power system owners, operators or users. An entity variance may not be inconsistent with or less stringent than the reliability standards as it would otherwise exist without the entity variance. An entity variance shall be approved only through the NERC standards development procedure and shall be made part of the NERC reliability standards.

“ERO governmental authority” is a government agency that has subject matter jurisdiction over the reliability of the bulk power system within its jurisdictional territory. In the United States, the ERO governmental authority is the Federal Energy Regulatory Commission. In Canada, the ERO governmental authority resides with applicable federal and provincial governments who may delegate duties and responsibilities to other entities. Use of the term is intended to be inclusive of all applicable authorities in the United States, Canada, and Mexico, and is not restricted to those listed here.

“Net Energy for Load” or “NEL” means net generation of an electric system plus energy received from others less energy delivered to others through interchange. It includes system losses but excludes energy required for the storage of energy at energy storage facilities.

“Regional reliability organization” means each of the following organizations or any successor organizations: Electric Reliability Council of Texas, Florida Reliability Coordinating Council, Midwest Reliability Organization, Northeast Power Coordinating Council, ReliabilityFirst Corporation, SERC Reliability Corporation, Southwest Power Pool, and Western Electricity Coordinating Council.

“Reliable operation” means operating the elements of the bulk power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cyber security incident, or unanticipated failure of system elements.

“Regional criteria” means reliability requirements developed by a regional reliability organization that are necessary to implement, to augment, or to comply with reliability standards, but which are not reliability standards. Such regional criteria may be necessary to account for physical differences in the bulk power system but are not inconsistent with reliability standards nor do they result in lesser reliability. Such regional criteria are not enforceable pursuant to NERC-delegated authorities, but may be enforced through other available mechanisms. Regional criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents.

“Regional reliability standard” means a type of reliability standards that is applicable only within a particular regional entity or group of regional entities. A regional reliability standard may augment, add detail to, or implement another reliability standard or cover matters not addressed by other reliability standards. Regional reliability standards, upon adoption by NERC and approval by the applicable ERO governmental authority(ies), shall be reliability standards and shall be enforced within the applicable regional entity or regional entities pursuant to delegated authorities.

“Reliability standard” means a requirement to provide for reliable operation of the bulk power system, including without limiting the foregoing, requirements for the operation of existing bulk power system facilities, including cyber security protection, and including the design of planned additions or modifications to such facilities to the extent necessary

for reliable operation of the bulk power system, but the term does not include any requirement to enlarge bulk power system facilities or to construct new transmission capacity or generation capacity. A reliability standard shall not be effective in the United States until approved by the Federal Energy Regulatory Commission and shall not be effective in other jurisdictions until made or allowed to become effective by the applicable governmental authority.

“Variance” means an aspect or element of a reliability standard that applies only within a particular regional entity or group of regional entities, or to a particular entity or class of entities. A variance allows an alternative approach to meeting the same reliability objective as the reliability standard, and is typically necessitated by a physical difference. A variance is embodied within a reliability standard and as such, if adopted by NERC and approved by the ERO governmental authority, shall be enforced within the applicable regional entity or regional entities pursuant to delegated authority.

SECTION 300 — RELIABILITY STANDARDS DEVELOPMENT

301. General

NERC shall develop and maintain reliability standards that apply to bulk power system owners, operators, and users and that enable NERC and regional entities to measure the reliability performance of bulk power system owners, operators, and users; and to hold them accountable for reliable operation of the bulk power systems. The reliability standards shall be technically excellent, timely, just, reasonable, not unduly discriminatory or preferential, in the public interest, and consistent with other applicable standards of governmental authorities.

302. Essential Attributes for Technically Excellent Reliability Standards

1. **Applicability** — Each reliability standard shall clearly identify the functional classes of entities responsible for complying with the reliability standard, with any specific additions or exceptions noted. Such functional classes¹ include: reliability coordinators, balancing authorities, transmission operators, transmission owners, generator operators, generator owners, interchange authorities, transmission service providers, market operators, planning authorities, transmission planners, resource planners, load-serving entities, purchasing-selling entities, and distribution providers. Each reliability standard shall also identify the geographic applicability of the standard, such as the entire North American bulk power system, an interconnection, or within a regional entity area. A standard may also identify any limitations on the applicability of the standard based on electric facility characteristics.
2. **Reliability Objectives** — Each reliability standard shall have a clear statement of purpose that shall describe how the standard contributes to the reliability of the bulk power system. The following general objectives for the bulk power system provide a foundation for determining the specific objective(s) of each reliability standard:
 - 2.1 **Reliability Planning and Operating Performance** — Bulk power systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions.
 - 2.2 **Frequency and Voltage Performance** — The frequency and voltage of bulk power systems shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
 - 2.3 **Reliability Information** — Information necessary for the planning and operation of reliable bulk power systems shall be made available to those entities responsible for planning and operating bulk power systems.

¹ These functional classes of entities are derived from NERC's Reliability Functional Model. When a standard identifies a class of entities to which it applies, that class must be defined in the Glossary of Terms Used in Reliability Standards.

- 2.4 **Emergency Preparation** — Plans for emergency operation and system restoration of bulk power systems shall be developed, coordinated, maintained, and implemented.
- 2.5 **Communications and Control** — Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of bulk power systems.
- 2.6 **Personnel** — Personnel responsible for planning and operating bulk power systems shall be trained and qualified, and shall have the responsibility and authority to implement actions.
- 2.7 **Wide-area View** — The reliability of the bulk power systems shall be assessed, monitored, and maintained on a wide-area basis.
- 2.8 **Security** — Bulk power systems shall be protected from malicious physical or cyber attacks.
3. **Performance Requirement or Outcome** — Each reliability standard shall state one or more performance requirements, which if achieved by the applicable entities, will provide for a reliable bulk power system, consistent with good utility practices and the public interest. Each requirement is not a “lowest common denominator” compromise, but instead achieves an objective that is the best approach for bulk power system reliability, taking account of the costs and benefits of implementing the proposal.
4. **Measurability** — Each performance requirement shall be stated so as to be objectively measurable by a third party with knowledge or expertise in the area addressed by that requirement. Each performance requirement shall have one or more associated measures used to objectively evaluate compliance with the requirement. If performance can be practically measured quantitatively, metrics shall be provided to determine satisfactory performance.
5. **Technical Basis in Engineering and Operations** — Each reliability standard shall be based upon sound engineering and operating judgment, analysis, or experience, as determined by expert practitioners in that particular field.
6. **Completeness** — Reliability standards shall be complete and self-contained. The standards shall not depend on external information to determine the required level of performance.
7. **Consequences for Noncompliance** — In combination with guidelines for penalties and sanctions, as well as other ERO and regional entity compliance documents, the consequences of violating a standard are clearly presented to the entities responsible for complying with the standards.
8. **Clear Language** — Each reliability standard shall be stated using clear and unambiguous language. Responsible entities, using reasonable judgment and in

keeping with good utility practices, are able to arrive at a consistent interpretation of the required performance.

9. **Practicality** — Each reliability standard shall establish requirements that can be practically implemented by the assigned responsible entities within the specified effective date and thereafter.
10. **Consistent Terminology** — To the extent possible, reliability standards shall use a set of standard terms and definitions that are approved through the NERC reliability standards development process.

303. Relationship between Reliability Standards and Competition

To ensure reliability standards are developed with due consideration of impacts on competition, to ensure standards are not unduly discriminatory or preferential, and recognizing that reliability is an essential requirement of a robust North American economy, each reliability standard shall meet all of these market-related objectives:

1. **Competition** — A reliability standard shall not give any market participant an unfair competitive advantage.
2. **Market Structures** — A reliability standard shall neither mandate nor prohibit any specific market structure.
3. **Market Solutions** — A reliability standard shall not preclude market solutions to achieving compliance with that standard.
4. **Commercially Sensitive Information** — A reliability standard shall not require the public disclosure of commercially sensitive information or other confidential information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards.
5. **Adequacy** — NERC shall not set standards defining an adequate amount of, or requiring expansion of, bulk power system resources or delivery capability.

304. Essential Principles for the Development of Reliability Standards

NERC shall develop reliability standards in accordance with the NERC *Reliability Standards Development Procedure*, which is incorporated into these rules as **Appendix 3A**. Appeals in connection with the development of a reliability standard shall also be conducted in accordance with the NERC *Reliability Standards Development Procedure*. Any amendments or revisions to the *Reliability Standards Development Procedure* shall be consistent with the following essential principles:

1. **Openness** — Participation shall be open to all persons who are directly and materially affected by the reliability of the North American bulk power system. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in NERC or any other organization, and shall

not be unreasonably restricted on the basis of technical qualifications or other such requirements.

2. **Transparency** — The process shall be transparent to the public.
3. **Consensus-building** — The process shall build and document consensus for each standard, both with regard to the need and justification for the standard and the content of the standard.
4. **Fair Balance of Interests** — The process shall fairly balance interests of all stakeholders and shall not be dominated by any single interest category.
5. **Due Process** — Development of standards shall provide reasonable notice and opportunity for any person with a direct and material interest to express views on a proposed standard and the basis for those views, and to have that position considered in the development of the standards.
6. **Timeliness** — Development of standards shall be timely and responsive to new and changing priorities for reliability of the bulk power system.

305. Registered Ballot Body

NERC reliability standards shall be approved by a registered ballot body prior to submittal to the board and then to ERO governmental authorities for their approval, where authorized by applicable legislation or agreement. This Section 305 sets forth the rules pertaining to the composition of, and eligibility to participate in, the registered ballot body.

1. **Eligibility to Vote on Standards** — Any person or entity may join the registered ballot body to vote on standards, whether or not such person or entity is a member of NERC.
2. **Inclusive Participation** — The segment qualification guidelines are inclusive; i.e., any entity with a legitimate interest in the reliability of the bulk power system that can meet any one of the eligibility criteria for a segment is entitled to belong to and vote in each segment for which it qualifies, subject to limitations defined in Sections 305.3 and 305.5.
3. **General Criteria for Registered Ballot Body Membership** — The general criteria for membership in the segments are:
 - 3.1 **Multiple Segments** — A corporation or other organization with integrated operations or with affiliates that qualifies to belong to more than one segment (e.g., transmission owners and load serving entities) may join once in each segment for which it qualifies, provided that each segment constitutes a separate membership and the organization is represented in each segment by a different representative. Affiliated entities are collectively limited to one membership in each segment for which they are qualified.

- 3.2 **Withdrawing from a Segment or Changing Segments** — After its initial registration in a segment, each registered participant may elect to withdraw from a segment or apply to change segments at any time.
- 3.3 **Review of Segment Criteria** — The board shall review the qualification guidelines and rules for joining segments at least every three years to ensure that the process continues to be fair, open, balanced, and inclusive. Public input will be solicited in the review of these guidelines.
4. **Proxies for Voting on Standards** — Any registered participant may designate an agent or proxy to vote on its behalf. There are no limits on how many proxies an agent may hold. However, for the proxy to be valid, NERC must have in its possession written documentation signed by the representative of the registered participant that the voting right by proxy has been transferred from the registered participant to the agent.
5. **Stakeholder Segments** — The specific criteria for membership in each registered ballot body segment are defined in the *Reliability Standards Development Procedure* in **Appendix 3A**.
6. **Review of Stakeholder Segment Entries**
NERC shall review all applications for joining the registered ballot body, and shall make a determination of whether the applicant's self-selection of a segment satisfies at least one of the guidelines to belong to that segment. The entity shall then become eligible to participate as a voting member of that segment. The Standards Committee shall resolve disputes regarding eligibility for membership in a segment, with the applicant having the right of appeal to the board.

306. Standards Committee

The Standards Committee shall provide oversight of the reliability standards development process to ensure stakeholder interests are fairly represented. The Standards Committee shall not under any circumstance change the substance of a draft or approved standard.

1. **Membership** — The Standards Committee is a representative committee comprising representatives of two members of each of the segments in the registered ballot body.
2. **Elections** — Standards Committee members are elected for staggered (one per segment per year) two-year terms by the respective stakeholder segments in accordance with the *Procedure for the Election of Members of the NERC Standards Committee*, which is incorporated into these rules as **Appendix 2**. Segments may use their own election procedure if such a procedure is ratified by two-thirds of the members of a segment and approved by the board.
3. **Canadian Representation**
 - 3.1 **Provision for Sufficient Canadian Representation** — If any regular election of Standards Committee members does not result in at least two

Canadian members on the Standards Committee, the Canadian nominees who were not elected but who received the next highest percentage of votes within their respective segment(s) will be designated as additional members of the Standards Committee, as needed to achieve a total of two Canadian members.

- 3.2 **Terms of Specially Designated Canadian Members** — Each specially designated Canadian member of the Standards Committee shall have a term ending with the next annual election.
 - 3.3 **Segment Preference** — If any segment has an unfilled representative position on the Standards Committee following the annual election, the first preference is to assign each specially designated Canadian representative to a segment with an unfilled representative position for which his or her organization qualifies.
 - 3.4 **Rights of Specially Designated Canadian Members** — Any specially designated Canadian members of the Standards Committee shall have the same rights and obligations as all other members of the Standards Committee.
4. **Open Meetings** — All meetings of the Standards Committee shall be open and publicly noticed on the NERC Web site.

307. Standards Process Manager

NERC shall assign a standards process manager to administer the development of reliability standards. The standards process manager shall be responsible for ensuring that the development and revision of standards are in accordance with the NERC *Reliability Standards Development Procedure*. The standards process manager shall work to achieve the highest degree of integrity and consistency of quality and completeness of the reliability standards. The standards process manager shall coordinate with any regional entities that develop regional reliability standards to ensure those standards are effectively integrated with the NERC reliability standards.

308. Steps in the Development of Reliability Standards

1. **Procedure** — NERC shall develop reliability standards through the process set forth in the NERC *Reliability Standards Development Procedure* (**Appendix 3A**). The procedure includes a provision for approval of urgent action standards that can be completed within 60 days and emergency actions that may be further expedited.
2. **Board Approval** — Reliability standards or revisions to reliability standards approved by the ballot pool in accordance with the *Reliability Standards Development Procedure* shall be submitted for approval by the board. No reliability standard or revision to a reliability standard shall be effective unless approved by the board.

3. **Governmental Approval** — After receiving board approval, a reliability standard or revision to a reliability standard shall be submitted to all applicable ERO governmental authorities in accordance with Section 309. No reliability standard or revision to a reliability standard shall be effective within a geographic area over which an ERO governmental authority has jurisdiction unless approved by such ERO governmental authority or is otherwise made effective pursuant to the laws applicable to such ERO governmental authority.

309. Filing of Reliability Standards for Approval by ERO Governmental Authorities

1. **Filing of Reliability Standards for Approval** — Where authorized by applicable legislation or agreement, NERC shall file with the applicable ERO governmental authorities each reliability standard, modification to a reliability standard, or withdrawal of a standard that is approved by the board. Each filing shall be in the format required by the ERO governmental authority and shall include: a concise statement of the basis and purpose of the standard; the text of the standard; the implementation plan for the reliability standard; a demonstration that the standard meets the essential attributes of reliability standards as stated in Section 302; the drafting team roster; the ballot pool and final ballot results; and a discussion of public comments received during the development of the reliability standard and the consideration of those comments.
2. **Remanded Reliability Standards and Directives to Develop Standards** — If an ERO governmental authority remands a reliability standard to NERC or directs NERC to develop a reliability standard, NERC shall within five (5) business days notify all other applicable ERO governmental authorities, and shall within thirty (30) calendar days report to all ERO governmental authorities a plan and timetable for modification or development of the reliability standard. Standards that are remanded or directed by an ERO governmental authority shall be modified or developed using the *Reliability Standards Development Procedure*. NERC shall, during the development of a modification for the remanded standard or directed standard, consult with other ERO governmental authorities to coordinate any impacts of the proposed standards in those other jurisdictions. The urgent approval action procedure may be applied if necessary to meet a timetable for action required by the ERO governmental authorities, respecting to the extent possible the provisions in the standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interest in developing reliability standards.
3. **Directives to Develop Standards under Extraordinary Circumstances** — An ERO governmental authority may, on its own initiative, determine that extraordinary circumstances exist requiring expedited development of a reliability standard. In such a case, the applicable agency may direct the development of a standard within a certain deadline. NERC staff shall prepare the standards authorization request and seek a stakeholder sponsor for the request. If NERC is unable to find a sponsor for the proposed standard, NERC will be designated as the requestor. The proposed standard will then proceed through the standards development process, using the urgent and emergency action procedures

described in the *Reliability Standards Development Procedure* as necessary to meet the specified deadline. The timeline will be developed to respect, to the extent possible, the provisions in the standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in developing reliability standards.

- 3.1 Consistent with all reliability standards developed under the urgent or emergency action process, each of the three possible follow-up actions as documented in the *Reliability Standards Development Procedure* are to be completed through the standards development process and are subject to approval by the ERO governmental authorities in the U.S. and Canada.

310. Reliability Standards Annual Work Plan

NERC shall develop and provide an annual work plan for development of reliability standards to the applicable ERO governmental authorities. NERC shall consider the comments and priorities of the ERO governmental authorities in developing and updating the work plan. Each annual work plan shall include a progress report comparing results achieved to the prior year's plan.

311. Regional Entity Standards Development Procedures

1. **NERC Approval of Regional Entity Reliability Standards Development Procedure** — To enable a regional entity to develop regional reliability standards that are to be recognized and made part of NERC reliability standards, a regional entity may request NERC to approve a regional entity reliability standards development procedure.
2. **Public Notice and Comment on Regional Reliability Standards Development Procedure** — Upon receipt of such a request, NERC shall publicly notice and request comment on the proposed regional standards development procedure, allowing a minimum of 45 days for comment. The regional entity shall have an opportunity to resolve any objections identified in the comments and may choose to withdraw the request, revise the procedure and request another posting for comment, or submit the procedure, along with its consideration of any objections received, for approval by NERC.
3. **Evaluation of Regional Reliability Standards Development Procedure** — NERC shall evaluate whether a regional reliability standards development procedure meets the criteria listed below and shall consider stakeholder comments, any unresolved stakeholder objections, and the consideration of comments provided by the regional entity, in making that determination. If NERC determines the regional reliability standards development procedure meets these requirements, the procedure shall be submitted to the board for approval. The board shall consider the recommended action, stakeholder comments, any unresolved stakeholder comments, and the regional entity consideration of comments in determining whether to approve the regional reliability standards development procedure.

- 3.1 **Evaluation Criteria** — The regional reliability standards development procedure shall be:
- 3.1.1 **Open** — The regional reliability standards development procedure shall provide that any person or entity who is directly and materially affected by the reliability of the bulk power systems within the regional entity shall be able to participate in the development and approval of reliability standards. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in the regional entity, a regional entity or any organization, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements.
 - 3.1.2 **Inclusive** — The regional reliability standards development procedure shall provide that any person with a direct and material interest has a right to participate by expressing an opinion and its basis, having that position considered, and appealing through an established appeals process if adversely affected.
 - 3.1.3 **Balanced** — The regional reliability standards development procedure shall have a balance of interests and shall not permit any two interest categories to control the vote on a matter or any single interest category to defeat a matter.
 - 3.1.4 **Due Process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.
 - 3.1.5 **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.
 - 3.1.6 **Accreditation of Regional Standards Development Procedure** — A regional entity's reliability standards development procedure that is accredited by the American National Standards Institute or the Standards Council of Canada shall be deemed to meet the criteria listed in this Section 311.3.1, although such accreditation is not a prerequisite for approval by NERC.
 - 3.1.7 **Use of NERC Procedure** — A regional entity may adopt the *NERC Reliability Standards Development Procedure* as the regional reliability standards development procedure, in which

case the regional entity's procedure shall be deemed to meet the criteria listed in this Section 311.3.1.

4. **Revisions of Regional Reliability Standards Development Procedures** — Any revision to a regional reliability standards development procedure shall be subject to the same approval requirements set forth in Sections 311.1 through 311.3.
5. **Duration of Regional Reliability Standards Development Procedures** — The regional reliability standards development procedure shall remain in effect until such time as it is replaced with a new version approved by NERC or it is withdrawn by the regional entity. The regional entity may, at its discretion, withdraw its regional reliability standards development procedure at any time.

312. Regional Reliability Standards

1. **Basis for Regional Reliability Standards** — Regional entities may propose regional reliability standards that set more stringent reliability requirements than the NERC reliability standard or cover matters not covered by an existing NERC reliability standard. Such regional reliability standards shall in all cases be approved by NERC and made part of the NERC reliability standards and shall be enforceable in accordance with the delegation agreement between NERC and the regional entity or other instrument granting authority over enforcement to the regional entity. No entities other than NERC and the regional entity shall be permitted to develop regional reliability standards that are enforceable under statutory authority delegated to NERC and the regional entity.
2. **Regional Reliability Standards That are Directed by a NERC Reliability Standard** — Although it is the intent of NERC to promote uniform reliability standards across North America, in some cases it may not be feasible to achieve a reliability objective with a reliability standard that is uniformly applicable across North America. In such cases, NERC may direct regional entities to develop regional reliability standards necessary to implement a NERC reliability standard. Such regional reliability standards that are developed pursuant to a direction by NERC shall be made part of the NERC reliability standards.
3. **Procedure for Developing an Interconnection-wide Regional Standard** — A regional entity organized on an interconnection-wide basis may propose a regional reliability standard for approval as a NERC reliability standard to be made mandatory for all applicable bulk power system owners, operators, and users within that interconnection.
 - 3.1 **Presumption of Validity** — An interconnection-wide regional reliability standard that is determined by NERC to be just, reasonable, and not unduly discriminatory or preferential, and in the public interest, and consistent with such other applicable standards of governmental authorities, shall be adopted as a NERC reliability standard. NERC shall rebuttably presume that a regional reliability standard developed, in accordance with a regional reliability standards development process approved by NERC, by a regional entity organized on an interconnection-

wide basis, is just, reasonable, and not unduly discriminatory or preferential, and in the public interest, and consistent with such other applicable standards of governmental authorities.

- 3.2 **Notice and Comment Procedure for Interconnection-wide Regional Reliability Standard** — NERC shall publicly notice and request comment on the proposed interconnection-wide regional reliability standard, allowing a minimum of 45 days for comment. NERC may publicly notice and post for comment the proposed regional reliability standard concurrent with similar steps in the regional entity's reliability standards development process. The regional entity shall have an opportunity to resolve any objections identified in the comments and may choose to comment on or withdraw the request, revise the proposed regional reliability standard and request another posting for comment, or submit the proposed regional reliability standard along with its consideration of any objections received, for approval by NERC.
- 3.3 **Approval of Interconnection-wide Regional Reliability Standard by NERC** — NERC shall evaluate and recommend whether a proposed interconnection-wide regional reliability standard has been developed in accordance with all applicable procedural requirements and whether the regional entity has considered and resolved stakeholder objections that could serve as a basis for rebutting the presumption of validity of the regional reliability standard. The regional entity, having been notified of the results of the evaluation and recommendation concerning NERC proposed regional reliability standard, shall have the option of presenting the proposed regional reliability standard to the board for approval as a NERC reliability standard. The board shall consider the regional entity's request, NERC's recommendation for action on the regional reliability standard, any unresolved stakeholder comments, and the regional entity's consideration of comments, in determining whether to approve the regional reliability standard as a NERC reliability standard.
- 3.4 **ERO Governmental Authority Approval** — An interconnection-wide regional reliability standard that has been approved by the board shall be filed with the applicable ERO governmental authorities for approval, where authorized by applicable legislation or agreement, and shall become effective when approved by such ERO governmental authorities or on a date set by the ERO governmental authorities.
- 3.5 **Enforcement of Interconnection-wide Regional Reliability Standard** — An interconnection-wide regional reliability standard that has been approved by the board and by the applicable ERO governmental authorities or is otherwise made effective within Canada as mandatory within a particular region shall be applicable and enforced as a NERC reliability standard within the region.

4. **Procedure for Developing Non-Interconnection-Wide Regional Reliability Standards**

Regional entities that are not organized on an interconnection-wide basis may propose regional reliability standards to apply within their respective regions. Such standards may be developed through the NERC reliability standards development procedure, or alternatively, through a regional reliability standards development procedure that has been approved by NERC.

4.1 **No Presumption of Validity** — Regional reliability standards that are not proposed to be applied on an interconnection-wide basis are not presumed to be valid but may be demonstrated by the proponent to be valid.

4.2 **Notice and Comment Procedure for Non-Interconnection-wide Regional Reliability Standards** — NERC shall publicly notice and request comment on the proposed regional reliability standard, allowing a minimum of 45 days for comment. NERC may publicly notice and post for comment the proposed regional reliability standard concurrent with similar steps in the regional entity's reliability standards development process. The regional entity shall have an opportunity to comment on or resolve any objections identified in the comments and may choose to withdraw the request, revise the proposed regional reliability standard and request another posting for comment, or submit the proposed regional reliability standard along with its consideration of any objections received, for approval by NERC.

4.3 **NERC Approval of Non-Interconnection-wide Regional Reliability Standards** — NERC shall evaluate and recommend whether a proposed non-Interconnection-wide regional reliability standard has been developed in accordance with all applicable procedural requirements and whether the regional entity has considered and resolved stakeholder objections. The regional entity, having been notified of the results of the evaluation and recommendation concerning proposed regional reliability standard, shall have the option of presenting the proposed regional reliability standard to the board for approval as a NERC reliability standard. The board shall consider the regional entity's request, the recommendation for action on the regional reliability standard, any unresolved stakeholder comments, and the regional entity's consideration of comments, in determining whether to approve the regional reliability standard as a NERC reliability standard.

4.4 **NERC Governmental Authority Approval** — A non-Interconnection-wide regional reliability standard that has been approved by the board shall be filed with the applicable ERO governmental authorities for approval, where authorized by applicable legislation or agreement, and shall become effective when approved by such ERO governmental authorities or on a date set by the ERO governmental authorities.

- 4.5 **Enforcement of Non-Interconnection-wide Regional Reliability Standards** — A non-Interconnection-wide regional reliability standard that has been approved by the board and by the applicable ERO governmental authorities or is otherwise made effective within Canada as mandatory within a particular region shall be applicable and enforced as a NERC reliability standard within the region.

5. **Appeals**

A Regional Entity shall have the right to appeal NERC's decision not to approve a proposed regional reliability standard or variance to the Commission or other applicable governmental authority.

313. Other Regional Criteria, Guides, Procedures, Agreements, Etc.

1. **Regional Criteria** — Regional entities may develop regional criteria that are necessary to implement, to augment, or to comply with reliability standards, but which are not reliability standards. Regional criteria may also address issues not within the scope of reliability standards, such as resource adequacy. Regional criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents used to enhance the reliability of the regional bulk power system. These documents typically provide benefits by promoting more consistent implementation of the NERC reliability standards within the region. These documents are not NERC reliability standards, regional reliability standards, or regional variances, and therefore are not enforceable under authority delegated by NERC pursuant to delegation agreements and do not require NERC approval.
2. **Catalog of Regional Reliability Criteria** — NERC shall maintain a current catalog of regional reliability criteria. Regional reliability organizations and regional entities shall provide a catalog listing of regional reliability criteria to NERC and shall notify NERC of changes to the listing. Regional reliability organizations and regional entities shall provide any listed document to NERC upon written request.

314. Conflicts with Statutes, Regulations, and Orders

Notice of Potential Conflict — If a bulk power system owner, operator, or user determines that a NERC or regional reliability standard may conflict with a function, rule, order, tariff, rate schedule, legislative requirement or agreement that has been accepted, approved, or ordered by a governmental authority affecting that entity, the entity shall expeditiously notify the governmental authority, NERC, and the relevant regional entity of the conflict.

1. **Determination of Conflict** — NERC, upon request of the governmental authority, may advise the governmental authority regarding the conflict and propose a resolution of the conflict, including revision of the reliability standard if appropriate.

2. **Regulatory Precedence** — Unless otherwise ordered by a governmental authority, the affected bulk power system owner, operator, or user shall continue to follow the function, rule, order, tariff, rate schedule, legislative requirement, or agreement accepted, approved, or ordered by the governmental authority until the governmental authority finds that a conflict exists and orders a remedy and such remedy is affected.

315. Revisions to NERC Reliability Standards Development Procedure

Any person or entity may submit a written request to modify NERC *Reliability Standards Development Procedure*. Consideration of the request and development of the revision shall follow the process defined in the NERC *Reliability Standards Development Procedure*. Upon approval by the board, the revision shall be submitted to the ERO governmental authorities for approval. Changes shall become effective only upon approval by the ERO governmental authorities or on a date designated by the ERO governmental authorities or as otherwise applicable in a particular jurisdiction.

316. Accreditation

NERC shall seek continuing accreditation of the NERC reliability standards development process by the American National Standards Institute and the Standards Council of Canada.

317. Five-Year Review of Standards

NERC shall complete a review of each NERC reliability standard at least once every five years from the effective date of the standard or the latest revision to the standard, whichever is later. The review process shall be conducted in accordance with the NERC *Reliability Standards Development Procedure*. The standards process manager shall be responsible for administration of the five-year review of reliability standards. As a result of this review, the NERC reliability standard shall be reaffirmed, revised, or withdrawn. If the review indicates a need to revise or withdraw the standard, a request for revision or withdrawal shall be prepared, submitted and addressed in accordance with the NERC *Reliability Standards Development Procedure*.

318. Coordination with the North American Energy Standards Board

NERC shall, through a memorandum of understanding, maintain a close working relationship with the North American Energy Standards Board and ISO/RTO Council to ensure effective coordination of wholesale electric business practice standards and market protocols with the NERC reliability standards.

319. Archived Standards Information

NERC shall maintain a historical record of reliability standards information that is no longer maintained on-line. For example, standards that expired or were replaced may be removed from the on-line system. Archived information shall be retained indefinitely as practical, but in no case less than five years or one complete standards review cycle from the date on which the standard was no longer in effect. Archived records of reliability

standards information shall be available electronically within 30 days following the receipt by the standards process manager of a written request.

320. Alternate Method for Adopting Violation Risk Factors

In the event the standards development process fails to produce violation risk factors for a particular standard in a timely manner, the Board of Trustees may adopt violation risk factors for that standard using the procedures set out in Section 1400 of these Rules of Procedure.

SECTION 400 — COMPLIANCE ENFORCEMENT

401. Scope of the NERC Compliance Enforcement Program

1. **Components of the NERC Compliance Enforcement Program** — NERC shall develop and implement a NERC Compliance Monitoring and Enforcement Program to promote the reliability of the bulk power system by enforcing compliance with approved reliability standards in those regions of North American in which NERC and/or a regional entity (pursuant to a delegation agreement with NERC that has been approved by the applicable ERO governmental authority) has been given enforcement authority. There are four distinct parts of the NERC Monitoring and Compliance Enforcement Program: (1) NERC's oversight of the regional entity compliance programs (Section 402), (2) the definition of the required regional entity compliance enforcement program attributes (Section 403), (3) NERC's monitoring of regional entity compliance with reliability standards (Section 404), and (4) the monitoring of compliance with reliability standards that are applicable to NERC (Sections 405–406).
2. **Who Must Comply** — Where required by applicable legislation, regulation or agreement, all bulk power system owners, operators, and users, and in some cases regional reliability organizations, regional entities, and NERC, are required to comply with all approved NERC reliability standards at all times. Regional reliability standards and regional variances approved by NERC and the applicable ERO governmental authority shall be considered NERC reliability standards and shall apply to all bulk power system owners, operators, or users responsible for meeting those standards within the regional entity boundaries, whether or not the bulk power system owner, operator, or user is a member of the regional entity.
3. **Data Access** — All bulk power system owners, operators, and users shall provide to NERC and the applicable regional entity such information as is necessary to monitor compliance with the reliability standards. NERC and the applicable regional entity will define the data retention and reporting requirements in the reliability standards and compliance reporting procedures.
4. **Role of Regional Entities in the Compliance Enforcement Program** — Each regional entity that has been delegated authority through a delegation agreement or other legal instrument approved by the applicable ERO governmental authority shall, in accordance with the terms of the approved delegation agreement, administer a regional entity compliance enforcement program to meet the NERC Compliance Monitoring and Enforcement Program goals and the requirements in this Section 400.
5. **Program Continuity** — NERC will ensure continuity of compliance monitoring and enforcement within the geographic boundaries of a regional entity in the event that NERC does not have a delegation agreement, or the regional entity withdraws from the agreement or does not operate its compliance enforcement program in accordance with the delegation agreement or other applicable requirements.

- 5.1 Should NERC not have a delegation agreement with a regional entity covering a geographic area, or a regional entity withdraws from an existing delegation agreement or the delegation agreement is otherwise terminated, NERC will directly administer the Compliance Monitoring and Enforcement Program applicable to owners, operators and users of the bulk-power system within that geographic area.
 1. This monitoring and enforcement will be accomplished by NERC and compliance staff from another approved regional entity.
 2. If an existing delegation agreement with a regional entity is terminating, the regional entity shall promptly provide to NERC all relevant compliance information regarding registered entities, contacts, prior compliance information and actions, mitigation plans, and remedial actions for the period in which the regional entity was responsible for administering the Compliance Monitoring and Enforcement Program.
 3. NERC will levy and collect all penalties directly and will utilize any penalty monies collected to offset the expenses of administering the compliance monitoring and enforcement program for the geographic area.
- 5.2 Should a regional entity seek to withdraw from its delegation agreement, NERC will seek agreement from another regional entity to amend its delegation agreement with NERC to extend that regional entity's boundaries for compliance monitoring and enforcement. In the event no regional entity is willing to accept this responsibility, NERC will administer the Compliance Monitoring and Enforcement Program within the geographical boundaries of the regional entity seeking to withdraw from the delegation agreement, in accordance with Section 401.5.1.
6. **Actively Monitored Requirements** — NERC, with input from the regional entities, stakeholders, and regulators, shall annually select a subset of the NERC reliability standards and requirements to be actively monitored and audited in the NERC annual compliance program. Compliance is required with all NERC reliability standards whether or not they are included in the subset of reliability standards and requirements designated to be actively monitored and audited in the NERC annual compliance program.
7. **Penalties, Sanctions, and Remedial Actions** — NERC and regional entities will apply penalties, sanctions, and remedial actions that bear a reasonable relation to the seriousness of a violation and take into consideration timely remedial efforts as defined in the NERC *Sanction Guidelines*, which is incorporated into these rules as **Appendix 4B**.
8. **Multiple Enforcement Actions** – A registered entity shall not be subject to an enforcement action by NERC and a regional entity for the same violation.
9. **Records** — NERC shall maintain a record of each compliance submission, including self-reported, confirmed, and alleged violations of approved reliability

standards; associated penalties, sanctions, remedial actions and settlements; and the status of mitigation actions.

402. NERC Oversight of the Regional Entity Compliance Enforcement Programs

1. **NERC Monitoring Program** — NERC shall have a program to monitor the compliance enforcement program of each regional entity that has been delegated authority. The objective of this monitoring program shall be to ensure that the regional entity carries out its compliance enforcement program in accordance with these rules and the terms of the delegation agreement, and to ensure consistency and fairness of the regional entity's compliance enforcement program. Oversight and monitoring by NERC shall be accomplished through an annual compliance enforcement program review, program audits, and regular evaluations of regional entity compliance enforcement program performance as described below.
 - 1.1 **NERC Review of Regional Compliance Enforcement Program Annual Plans** — NERC shall require each regional entity to submit for review and approval an annual compliance enforcement program implementation plan. NERC shall review each regional entity's compliance enforcement program annual implementation plan and shall accept the plan if it meets NERC requirements and the requirements of the delegation agreement.
 - 1.2 **Regional Entity Program Evaluation** — NERC shall annually evaluate the goals, tools, and procedures of each regional entity compliance enforcement program to determine the effectiveness of each regional entity program, using criteria developed by the NERC Compliance and Certification Committee.
 - 1.3 **Regional Entity Program Audit** — At least once every three years, NERC shall conduct an audit to evaluate how each regional entity compliance enforcement program implements the NERC Compliance Monitoring and Enforcement Program. The evaluation shall be based on these rules of procedures, the delegation agreement, approved regional entity annual compliance enforcement program annual implementation plans, required program attributes, and the NERC compliance program procedures. These evaluations shall be provided to the appropriate ERO governmental authorities to demonstrate the effectiveness of each regional entity.
 - 1.3.1 NERC shall maintain an audit procedure containing the requirements, steps, and timelines to conduct an audit of each regional entity compliance enforcement program. The current procedure is contained in the NERC Audit of Regional Entity Compliance Programs, which is incorporated into these rules as **Appendix 4A**.
 - 1.3.2 NERC shall establish a program to audit bulk power system owners, operators, and users operating within a regional entity to verify the findings of previous compliance audits conducted by the regional entity to evaluate how well the regional entity compliance

enforcement program is meeting its delegated authority and responsibilities.

- 1.4 ERO governmental authorities will be allowed to participate as an observer in any audit conducted by NERC of a regional entity's compliance monitoring and enforcement program. A representative of the regional entity being audited will be allowed to participate in the audit as an observer.
2. **Consistency Among Regional Compliance Enforcement Programs** — To provide for a consistent compliance enforcement program for all bulk power system owners, operators, and users required to comply with approved reliability standards, NERC shall maintain a single, uniform compliance monitoring and enforcement program. Differences in regional entity program methods, including determination of violations and penalty assessment, shall be justified on a case-by-case basis and fully documented in each regional entity delegation agreement.
 - 2.1 NERC shall ensure that each of the regional entity compliance enforcement programs meets these Rules of Procedure and follows the terms of the delegation agreement and the approved regional entity compliance enforcement program annual plan.
 - 2.2 NERC shall develop a single, uniform compliance monitoring and enforcement program containing the procedures to ensure the consistency and fairness of the processes used to determine regional entity compliance enforcement program findings of compliance and noncompliance, and the application of penalties and sanctions.
 - 2.3 NERC shall periodically conduct regional entity compliance manager forums. These forums shall use the results of regional entity compliance program audits and findings of NERC compliance staff to identify and refine regional entity compliance program differences into a set of best practices over time.
3. **Information Collection and Reporting** — NERC and the regional entities shall implement data management procedures that address data reporting requirements, data integrity, data retention, data security, and data confidentiality.
4. **Violation Disclosure** — NERC shall disclose all confirmed violations and maintain as confidential alleged violations, according to the reporting and disclosure process in Section 408.
5. **Authority to Determine Noncompliance, Levy Penalties and Sanctions, and Issue Remedial Action Directives** — NERC and regional entity compliance staff shall have the authority and responsibility to make initial determinations of compliance or noncompliance, and where authorized by the appropriate governmental authorities or where otherwise authorized, to determine penalties and sanctions for noncompliance with a reliability standard, and issue remedial

action directives. Regional entity boards or a compliance panel reporting directly to the regional entity board will be vested with the authority for the overall regional entity compliance program and have the authority to impose penalties and sanctions on behalf of NERC, where authorized by applicable legislation or agreement. Remedial action directives may be issued by NERC or a regional entity that is aware of a bulk power system owner, operator, or user that is about to engage in an act or practice that would result in noncompliance. If, after receiving such a directive, the bulk power system owner, operator, or user does not take appropriate action to avert a violation of a reliability standard, NERC may petition the applicable ERO governmental authority to issue a compliance order.

6. **Due Process** — NERC shall establish and maintain a fair, independent, and nondiscriminatory appeals process. The appeals process is set forth in Sections 409–411. The process shall allow bulk power system owners, operators, and users to appeal the regional entity’s findings of noncompliance and to appeal penalties, sanctions, and remedial actions that are levied by the regional entity. Appeals beyond the NERC process will be heard by the applicable governmental authority.

The appeals process will also allow for appeals to NERC of any findings of noncompliance issued by NERC to a regional reliability organization for standards and requirements where the regional reliability organization is monitored for compliance to a reliability standard. No monetary penalties will be levied in these matters; however sanctions, remedial actions, and directives to comply may be applied by NERC.

7. **Conflict Disclosure** — NERC shall disclose to the appropriate governmental authorities any potential conflicts between a market rule and the enforcement of a regional reliability standard.
8. **Confidentiality** — To maintain the integrity of the NERC Compliance Monitoring and Enforcement Program, NERC and regional entity staff, audit team members, and committee members shall maintain the confidentiality of information shared during investigations, audits, drafting of reports, appeals, and closed meetings.
 - 8.1 NERC and the regional entity shall have in place appropriate codes of conduct and confidentiality agreements for staff and other compliance enforcement program participants.
 - 8.2 Individuals not bound by NERC or regional entity codes of conduct who serve on compliance-related committees or audit teams shall sign a NERC confidentiality agreement prior to participating on the committee or team.
 - 8.3 Information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information shall

not be distributed outside of a committee or team, nor released publicly. Other information subject to confidentiality is identified in Section 1500.

8.4 In the event that a staff, committee, or audit team member violates any of the confidentiality rules set forth above, the staff, committee, or audit team member and any member organization with which the individual is associated may be subject to appropriate action by the regional entity or NERC, including prohibiting participation in future compliance enforcement activities.

9. **Auditor Training** — NERC shall develop and provide training in auditing skills to all people who participate in NERC and regional entity compliance enforcement audits. Training for NERC and regional entity personnel and others who serve as compliance audit team leaders shall be more comprehensive than training given to industry experts, regional entity members, and volunteers. Training for regional entity members and volunteers may be delegated to the regional entity.

403. Required Attributes of Regional Entity Compliance Enforcement Programs

Each regional entity compliance enforcement program shall promote excellence in the enforcement of reliability standards. To accomplish this goal, each regional entity compliance enforcement program shall at a minimum meet all of the following attributes.

Program Structure

1. **Independence** — Each regional entity's governance of its compliance enforcement program shall exhibit independence, meaning the compliance enforcement program shall be organized so that its compliance monitoring and enforcement activities are carried out separately from other activities of the regional entity. The program shall not be unduly influenced by the bulk power system owners, operators, and users being monitored or other regional entity or regional reliability organization activities that are required to meet the reliability standards. Regional entities must include rules providing that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.
2. **Exercising Authority** — Each regional entity compliance enforcement program shall exercise the responsibility and authority in carrying out the delegated functions of the NERC Compliance Monitoring and Enforcement Program in accordance with delegation agreements. These functions include but are not limited to: data gathering, data reporting, compliance violation investigations, compliance auditing activities, evaluating compliance and noncompliance, imposing penalties and sanctions, and approving and tracking mitigation actions.
3. **Delegation of Authority** — To maintain independence, fairness, and consistency in the NERC Compliance Monitoring and Enforcement Program, a regional entity shall not sub-delegate its compliance enforcement program duties to entities or persons other than the regional entity compliance enforcement program staff, unless required by statute or regulation in the applicable jurisdiction.

4. **Hearings of Contested Findings or Sanctions** — The regional entity board or compliance panel reporting directly to the regional entity board (with appropriate recusal procedures) will be vested with the authority for conducting compliance hearings in which any bulk power system owner, operator, or user provided notice of an alleged violation may present facts and other information to contest a notice of alleged violation or any proposed penalty, sanction, or remedial action. Compliance hearings shall be conducted in accordance with the Hearing Process set forth in Attachment 2 to the NERC Compliance Monitoring and Enforcement Program document. If a stakeholder body serves as the hearing body, no two industry sectors may control any decision and no single segment may veto any matter related to compliance after recusals.

Program Resources

5. **Regional Entity Compliance Staff** — Each regional entity shall have sufficient resources to meet delegated compliance enforcement responsibilities, including the necessary professional staff to manage and implement the regional entity compliance enforcement program.
6. **Regional Entity Compliance Staff Independence** — The regional entity compliance enforcement program staff shall be capable of and required to make all initial determinations of compliance and noncompliance and determine penalties, sanctions, and remedial actions.
 - 6.1 Regional entity compliance enforcement program staff shall not have a conflict of interest, real or perceived, in the outcome of compliance violation investigations, compliance audits, reports, or sanctions. The regional entity shall have in effect a conflict of interest policy.
 - 6.2 Regional entity compliance enforcement program staff shall have the authority and responsibility to investigate, audit (with the input of industry experts or regional members), make initial determinations of compliance or noncompliance, and levy penalties and sanctions without interference or undue influence from regional entity members and their representative or other industry entities.
 - 6.3 Regional entity compliance enforcement program staff may call upon independent technical experts who have no conflict of interest in the outcome of the compliance violation investigation or compliance audit to provide technical advice or recommendations in the determination of compliance or noncompliance in compliance audits, compliance violation investigations, or review of self-reported violations.
 - 6.4 Regional entity compliance enforcement program staff shall abide by the confidentiality requirements contained in Section 1500 of these Rules of Procedure, the NERC delegation agreement and other confidentiality agreements required by the NERC Compliance Monitoring and Enforcement Program.
 - 6.5 Contracting with independent consultants or others working for the regional entity compliance enforcement program shall be permitted

provided the individual has not received compensation from a bulk power system owner, operator, or user being monitored for a period of at least the preceding six months and owns no financial interest in any bulk power system owner, operator, or user being monitored for compliance to the reliability standard, regardless of where the bulk power system owner, operator, or user operates. Any such individuals for the purpose of these rules shall be considered as augmenting regional entity compliance staff.

7. Use of Industry Experts and Regional Entity Members — Industry experts and regional entity members may be called upon to provide their technical expertise in compliance violation investigations, compliance audits, and other compliance activities.

- 7.1 The regional entity shall have procedures defining the allowable involvement of industry experts and regional entity members. The procedures shall address applicable antitrust laws and conflicts of interest.
- 7.2 Industry experts and regional entity members shall have no conflict of interest or financial interests in the outcome of their activities.
- 7.3 Regional entity members and volunteers, as part of teams or regional entity committees, may provide input to the regional entity compliance staff so long as the authority and responsibility for (i) initially evaluating compliance or noncompliance and (ii) levying penalties, sanctions, or remedial actions shall not be delegated to any person or entity other than the compliance staff of the regional entity. Industry experts, regional entity or regional reliability organization members, or regional entity or regional reliability organization committees shall not make initial determinations of noncompliance or levy penalties, sanctions, or remedial actions. Any committee involved shall be organized so that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.
- 7.4 Industry experts, regional entity, and regional reliability organization members shall sign a confidentiality agreement appropriate for the activity being performed.
- 7.5 All industry experts and regional entity members participating in compliance audits and compliance violation investigations shall successfully complete auditor training provided by NERC or the regional entity prior to performing these activities

Program Design

8. **Regional Entity Compliance Enforcement Program Content** — All approved reliability standards shall be included in the regional entity compliance enforcement program for all bulk power system owners, operators, and users within the defined boundaries of the regional entity. Compliance to approved regional entity reliability standards is applicable only within the footprint of the regional entity that submitted those particular regional entity reliability standards for approval. NERC will identify the minimum set of reliability standards and requirements to be actively monitored by the regional entity in a given year.
9. **Antitrust Provisions** — Each regional entity's compliance enforcement program shall be structured and administered to abide by U.S. antitrust law and Canadian competition law.
10. **Information Submittal** — All bulk power system owners, operators, and users within the regional entity responsible for complying with reliability standards shall submit timely and accurate information when requested by the regional entity or NERC, in accordance with established procedures of NERC and the regional entity. NERC and the regional entities shall preserve any mark of confidentiality on information submitted pursuant to Section 1502.1.
 - 10.1 Each regional entity has the authority to collect the necessary information to determine compliance and shall develop processes for gathering data from the bulk power system owners, operators, and users they monitor.
 - 10.2 When requested, the regional entities shall report information to NERC promptly and in accordance with NERC procedures.
 - 10.3 Regional entities shall notify NERC of all violations of NERC reliability standards by entities over which the regional entity has enforcement authority or enforcement responsibilities, whether self-reported, alleged, or confirmed, in accordance with the *Reporting and Disclosure Process* in Section 408.
 - 10.4 A bulk power system owner, operator, or user found in noncompliance with a reliability standard shall submit a mitigation plan with a timeline addressing how the noncompliance will be corrected. The regional entity compliance staff shall review and approve the mitigation plan. Regional entity compliance staff may issue remedial action directives to owners, operators and users of the bulk-power system to comply with reliability standards, as needed to preserve the reliability of the bulk power system.
 - 10.5 An officer of a bulk power system owner, operator, or user shall certify as accurate all compliance data self-reported to the regional entity compliance enforcement program.

- 10.6 Regional entities shall develop and implement procedures to spot-check and verify the compliance information submitted by bulk power system owners, operators, and users.
11. **Compliance Audits of Bulk Power System Owners, Operators, and Users** — Each regional entity will maintain a program of proactive compliance audits. The regional entity shall audit each bulk power system owner, operator, or user responsible for complying with reliability standards. A compliance audit is a process in which a detailed review of the activities of a bulk power system owner, operator, or user is performed to determine if that bulk power system owner, operator, or user is complying with approved reliability standards.
- 11.1 For those bulk power system owners and operators with primary reliability responsibility (i.e., entities requiring organizational certification), the compliance audit will be performed at least once every three years. For other bulk power system owners, operators, and users on the NERC Compliance Registry, compliance audits shall be performed on a schedule established by NERC.
- 11.2 Audits of bulk power system owners and operators with primary reliability responsibility will be performed on the audited entity's site. For other bulk power system owners, operators, and users on the NERC Compliance Registry, the audit may be either an on-site audit or based on review of documents, as determined to be necessary and appropriate by NERC or regional entity compliance program, staff.
- 11.3 Compliance audits must include a detailed review of the activities of the bulk power system owner, operator, or user to determine if the bulk power system owner, operator, or user is complying with all approved reliability standards identified for audit by NERC. The compliance audit shall include a review of supporting documentation and evidence used by the bulk power system owner, operator or user for self-certification compliance reporting for an appropriate reporting period since the last compliance audit.
- 11.4 NERC compliance staff may participate on any regional entity audit team, at any time at NERC's discretion. Additionally, any applicable ERO governmental authority may participate on an audit team as an observer in any regional entity audit within its jurisdiction, at the ERO governmental authority's discretion.
12. **Compliance Audit Results** — The regional entity shall make an evaluation of a bulk power system owner's, operator's, or user's compliance based on the information obtained from a compliance audit and previously reported compliance information. After due process is complete, this evaluation (excluding any critical energy infrastructure information or other confidential

information) shall be made public. The regional entity shall send the report to NERC for public posting.

13. **Compliance Violation Investigations** — Compliance violation investigations are necessary to determine if a violation of reliability standards has occurred when certain system events occur, or when other owners, operators, or users of the bulk power system file complaints. NERC is ultimately responsible for how a regional entity conducts compliance violation investigations. Compliance violation investigations are initiated at the discretion of the regional entity compliance enforcement program staff, the senior executive officer of the regional entity, NERC compliance staff, or the NERC president. The regional entity shall respond to any complaints filed by one entity against another that allege a violation of reliability standards by a bulk power system owner, operator, or user. The regional entity may ask NERC to assist with the compliance violation investigation. Situations that can trigger a compliance violation investigation include but are not limited to (i) significant problems arising on the system, (ii) chronic noncompliance violations, (iii) bulk power system owners, operators, and users not submitting data in a timely or accurate manner, (iv) probable violations identified during readiness evaluations, (v) spot-checks to verify submitted data, (vi) filing of a compliance complaint with the regional entity or NERC, or (vii) Nuclear Regulatory Commission-defined incidents occurring on the transmission system.
14. **Confidentiality of Compliance Audits and Compliance Violation Investigations** — All compliance violation investigations are to be non-public unless NERC, ~~or the~~ regional entity or FERC or another applicable governmental authority with jurisdiction determines a need to conduct a public investigation. Advance authorization from the applicable ERO governmental authority is required to make public any compliance violation investigation, compliance audit, or any information relating to a compliance violation investigation or compliance audit, or to permit interventions when determining whether to impose a penalty. This prohibition on making public any compliance violation investigation or compliance audit does not prohibit NERC or a regional entity from publicly disclosing the initiation of or results from an analysis of a significant system event under Section 807 or of off-normal events or system performance under Section 808, so long as specific allegations or conclusions regarding alleged violations of reliability standards are not included in such disclosures.
15. **Report all Violations** — Each regional entity compliance enforcement program shall report to NERC all violations whether self-reported, alleged, or discovered by the region through a compliance audit or compliance violation investigation of all approved reliability standards in accordance with the *Reporting and Disclosure Process* in Section 408. The regional entity will promptly notify NERC of any change in the status of a violation and provide updates at least monthly regarding the status of any compliance audits, compliance violation investigations, or hearings.

16. **Critical Energy Infrastructure Information** — Information that would jeopardize bulk power system reliability, including information relating to a Cyber Security Incident will be identified and protected from public disclosure as critical energy infrastructure information. In accordance with Section 1500, information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information shall be redacted according to NERC procedures and shall not be released publicly.
17. **Penalties, Sanctions, and Remedial Actions** — Each regional entity will apply all penalties, sanctions, and remedial actions directives in accordance with the approved *ERO Sanction Guidelines*. Any changes to the *ERO Sanction Guidelines* to be used by any regional entity must be approved by NERC and submitted to the appropriate ERO governmental body for approval. All confirmed violations, penalties, and sanctions will be provided to NERC for review and filing with applicable ERO governmental authorities as a notice of penalty.
18. **Mitigation of Violations** — Each regional entity compliance enforcement program will require that any bulk power system owner, operator, or user found to be in noncompliance with a reliability standard requirement shall submit a mitigation plan with a timeline addressing how the noncompliance will be corrected. The mitigation plan shall be reviewed and approved by the regional entity compliance staff and the regional entity's compliance panel or board as appropriate.
19. **Settlement Processes** — The regional entity may enter into a settlement process with owners, operators and users of the bulk power system for alleged violations of a reliability standard and any associated financial penalty, sanction, or mitigation actions. NERC must be notified of all settlement proceedings and may participate in any settlement processes. Regional entities may consider all relevant facts in the settlement. Any settlement must ensure that the reliability of the bulk power system will not be compromised by the settlement and that a violation of reliability standards will not occur as a result of the settlement. All settlements must be reported to NERC, which will in turn report the settlement of an alleged violation to the Federal Energy Regulatory Commission or the applicable ERO governmental authority. NERC shall publicly post each violation (whether confirmed or not) that is settled, and the resulting penalty or sanction.
20. **Regional Hearing Process** — Each regional entity compliance enforcement program shall establish and maintain a fair, independent, and nondiscriminatory process for hearing contested violations and any penalties or sanctions levied where authorized by applicable legislation or agreement. The hearing process shall allow bulk power system owners, operators, and users to contest both findings of compliance violations and any penalties and sanctions that are proposed to be levied. The regional entity hearing process shall be conducted before the regional entity board or a balanced committee established by and reporting to the regional entity board as the final adjudicator, provided, that (i) in

ERCOT, the Public Utility Commission of Texas may act as the final adjudicator, and (ii) Canadian provincial regulators may act as the final adjudicator in their respective jurisdictions. The regional entity hearing process shall (i) include provisions for recusal of any members of the hearing body with a potential conflict of interest, real or perceived, from all compliance matters considered by the hearing body for which the potential conflict of interest exists and (ii) provide that no two industry sectors may control any decision and no single segment may veto any matter brought before the hearing body after recusals.

Each regional entity will notify NERC of all hearings and NERC may observe any of the proceedings. Each regional entity will notify NERC of the outcome of all hearings.

If a bulk power system owner, operator, or user has completed the regional entity hearing process and desires to appeal the outcome of the hearing, the bulk power system owner, operator, or user shall appeal to NERC, except that a determination of violation or penalty that has been directly adjudicated by an ERO governmental authority shall be appealed with that ERO governmental authority.

21. **Annual Regional Entity Compliance Enforcement Program Implementation Plan** — Each regional entity shall annually develop and submit to NERC for approval a regional entity compliance enforcement implementation plan that identifies the reliability standards and requirements to be actively monitored (both those required by NERC and any additional reliability standards the regional entity proposes to monitor), and how each NERC and regional entity identified standard will be monitored, evaluated, reported, sanctioned, and appealed. These implementation plans will be submitted to NERC on the schedule established by NERC, generally on or about November 1 of the preceding year.

21.1 In conjunction with the annual implementation plan, each regional entity with delegated authority must report to NERC regarding how it carried out its delegated enforcement authority in the previous year, the effectiveness of the program, and changes expected to correct any deficiencies identified. Each region will provide its annual report on the schedule established by NERC, generally on or about February 15 of the following year.

404. NERC Monitoring of Compliance for Regional Entities, Regional Reliability Organizations, or Bulk Power Owners, Operator, or Users

NERC shall monitor regional entity or regional reliability organization compliance with NERC reliability standards and, if no there is no delegation agreement in effect with a regional entity for the geographic area, shall monitor bulk power system owners, operators, and users for compliance with NERC reliability standards. Industry experts may be used as appropriate in compliance violation investigations, compliance audits, and other compliance activities, subject to confidentiality, antitrust, and conflict of interest provisions.

1. **NERC Obligations** — NERC compliance enforcement staff shall monitor the compliance of the regional entity or regional reliability organization with the reliability standards for which the regional entities or regional reliability organizations are responsible. NERC shall actively monitor in its annual Compliance Enforcement and Monitoring Program selected reliability standards that apply to the regional entities or regional reliability organizations. NERC shall evaluate compliance and noncompliance with all of the reliability standards that apply to the regional entities or regional reliability organizations and shall impose sanctions, penalties, or remedial action directives when there is a finding of noncompliance. NERC shall post all violations of reliability standards that apply to the regional entities or regional reliability organizations as described in the reporting and disclosure process in Section 408.

In addition, NERC will directly monitor bulk power system owners, operators, and users for compliance with NERC Reliability Standards in any geographic area for which there is not a delegation agreement in effect with a regional entity. In such cases, NERC will serve as the Compliance Monitor described in the NERC Compliance Monitoring and Enforcement Program document. Compliance matters contested by bulk power system owners, operators, and users in such an event will be heard by the NERC Compliance and Certification Committee.

2. **Mitigation Plans** — An owner, operator or user of the bulk-power system or a regional reliability organization found by NERC to be in noncompliance with a reliability standard shall submit to NERC for approval a mitigation plan with a timeline addressing how the noncompliance will be corrected.
3. **Compliance Audit of the Regional Entity or Regional Reliability Organization** — NERC shall perform a compliance audit of each regional entity or regional reliability organization responsible for complying with reliability standards at least once every three years. NERC shall make an evaluation of compliance based on the information obtained through the audit. After due process is complete, the final audit report shall be made public in accordance with the reporting and disclosure process in Section 408.
4. **Appeals Process** — Any regional entity, regional reliability organization or bulk-power system owner, operator or user found by NERC, as opposed to a regional entity, to be in noncompliance with a reliability standard may appeal the findings of noncompliance with reliability standards and any sanctions, or remedial action directives that are issued by NERC pursuant to the processes described in Sections 409 through 411.

405. Monitoring of Standards and Other Requirements Applicable to NERC

The NERC Compliance and Certification Committee shall establish and implement a process to monitor NERC's compliance with the reliability standards that apply to NERC. The process shall use independent monitors with no conflict of interest, real or perceived, in the outcomes of the process. All violations shall be made public according to the reporting and disclosure process in Section 408. The Compliance and Certification

Committee will also establish a procedure for monitoring NERC's compliance with its Rules of Procedure for the Standards Development, Compliance Enforcement, and Organization Registration and Certification Programs. Such procedures shall not be used to circumvent the appeals processes established for those programs.

406. Independent Audits of the NERC Compliance Monitoring and Enforcement Program

NERC shall provide for an independent audit of its compliance monitoring and enforcement program at least once every three years, or more frequently as determined by the board. The audit shall be conducted by independent expert auditors as selected by the board. The independent audit shall meet the following minimum requirements and any other requirements established by the NERC board.

1. **Effectiveness** — The audit shall evaluate the success and effectiveness of the NERC Compliance Monitoring and Enforcement Program in achieving its mission.
2. **Relationship** — The audit shall evaluate the relationship between NERC and the regional entity compliance enforcement programs and the effectiveness of the programs in ensuring reliability.
3. **Final Report Posting** — The final report shall be posted by NERC for public viewing according to the reporting and disclosure process in Section 408.
4. **Response to Recommendations** — If the audit report includes recommendations to improve the NERC Compliance Monitoring and Enforcement Program, the administrators of the NERC Compliance Monitoring and Enforcement Program shall provide a written response and plan to the board within 30 days of the release of the final audit report.

407. Penalties, Sanctions, and Remedial Actions

1. **NERC Review of Regional Penalties and Sanctions** — NERC shall review all penalties, sanctions, and remedial actions imposed by each regional entity for violations of reliability standards for consistency with similar violations and fairness in application.
2. **Developing Penalties and Sanctions** — The regional entity compliance enforcement program staff shall use the *ERO Sanction Guidelines*, which are incorporated into these rules as **Appendix 4B**, to develop an appropriate penalty, sanction, or remedial action for a violation, and shall notify NERC of the penalty or sanction.
3. **Hearing Processes** — The regional entity shall make available a regional entity hearing process for entities to contest a finding of noncompliance, penalty, sanction, or remedial actions in which the bulk power system owner, operator, or user will be afforded the opportunity to present facts to rebut such a finding, conforming to Attachment 2 of the NERC Compliance Monitoring and Enforcement document. The regional entity shall also make available the NERC

appeals process for bulk power system owners, operators, and users seeking an opportunity to dispute a penalty, sanction, or remedial action. Appeals beyond NERC of a finding of noncompliance, penalty, sanction, or remedial action will be before the appropriate ERO governmental authority.

4. **Effective Date of Penalty** — Where authorized by applicable legislation or agreement, no penalty imposed for a violation of a reliability standard shall take effect until the thirty-first day after NERC files, with the applicable ERO governmental authority, a “notice of penalty” and the record of the proceedings in which the violation and penalty were determined, or such other date as ordered by the ERO applicable governmental authority.

408. Reporting and Disclosure Process

1. **Reporting Requirements** — Each regional entity shall report all known violations, self-reported, confirmed, and alleged, of all reliability standards to NERC in accordance with the requirements established in the NERC Compliance Monitoring and Enforcement Program procedures document. Probable violations from NERC readiness evaluations will be treated as alleged violations when reported by the regional entity to NERC after review by regional entity staff. Each regional entity shall promptly report any change in the status of a violation and the disposition of each violation. Reports on the disposition of a violation will be provided at least quarterly or as otherwise required by NERC for reporting to ERO governmental authorities. NERC shall promptly notify the applicable ERO governmental authority of any self-reported, confirmed, or alleged violation of a reliability standard, any compliance violation investigation, any imposition of a penalty or sanction, or any remedial action directive.
 - 1.1 Requirements of reliability standards for which noncompliance may cause bulk power system reliability to be diminished or at risk, will be identified by NERC and require reporting by the regional entity to NERC within 48 hours after the regional entity learns of the violation. Such reports shall include information regarding the nature and reliability impact of the alleged violations, the identity of the organizations involved, and the status and timetable of any compliance investigation. NERC will promptly report such violation to the applicable ERO governmental authority.
2. **Reporting Process** — NERC shall implement and maintain a reporting process and utilize appropriate tools to facilitate reporting of violations. The reporting process shall identify all of the information required to be included in a violation report. NERC will report the disposition of each violation or alleged violation to the applicable ERO governmental authority on a quarterly basis.
3. **Confidential Information** — NERC will treat all alleged violations and matters related to a compliance violation investigation, including the status of the compliance violation investigation, as confidential in accordance with Section 1500. Any entity seeking to protect information as confidential shall follow the procedures of Section 1500. This information may result from compliance

violation investigations, compliance audits, and proceedings concerning an alleged violation or proposed penalty or sanction.

Information that would jeopardize bulk power system reliability, including information relating to a Cyber Security Incident will be identified and protected from public disclosure as critical energy infrastructure information in accordance with Section 1500.

- 3.1 The regional entity and NERC shall give bulk power system owners, operators, and users a reasonable opportunity to demonstrate that information concerning a violation is confidential before such report is disclosed to the public.
- 3.2 The types of information that will be considered confidential and will not (subject to statutory and regulatory requirements) be disclosed in any public information reported by NERC are identified in Section 1500.
4. **Reporting Updated Information** — Each regional entity and NERC shall report new information on each confirmed or alleged violation as it is received and processed.
5. **Violation Information Review** — NERC staff shall periodically review and analyze all reports of violations to identify trends, chronic violators, and other pertinent reliability issues.
6. **Public Posting** — When the affected bulk power system owner, operator, or user either agrees with the violation(s) or report, or the time for submitting an appeal is passed, or all appeals processes are complete, NERC shall publicly post each confirmed violation, penalty or sanction, and final compliance audit or compliance violation investigation report on its Web site.
 - 6.1 Each bulk power system owner, operator, or user may provide NERC with a statement to accompany the violation or report to be posted publicly. The statement must be on company letterhead and include a signature, as well as the name and title of the person submitting the information.
 - 6.2 In accordance with Section 1500, information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information (*NERC Security Guidelines for the Electricity Sector — Protecting Potentially Sensitive Information* may be used as a guide) or other confidential information shall be redacted in accordance with Section 1500 and not be released publicly.
 - 6.3 Subject to redaction of critical energy infrastructure information or other confidential information, for each confirmed violation or settlement relating to an alleged violation, the public posting shall include the name of any relevant entity, the nature, time period, and circumstances of such violation or alleged violation, and sufficient facts to enable owners,

operators and users of the bulk power system to evaluate whether they have engaged in or are engaging in similar activities.

409. Review of NERC Decisions

1. **Scope of Review** — A [registered entity or a regional entity](#) ~~or regional reliability organization~~ wishing to challenge a finding of noncompliance and the imposition of a penalty for a compliance measure directly administered by NERC, or a regional entity wishing to challenge a regional compliance program audit finding, may do so by filing a notice of the challenge with NERC's director of compliance no later than 21 days after issuance of the notice of finding of violation or audit finding. [Appeals by registered entities of decisions of regional entity hearing bodies shall be pursuant to sections 407.3 and 410.](#)
2. **Contents of Notice** — The notice of challenge shall include the full text of the decision that is being challenged, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief.
3. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of challenge, the NERC Director of Compliance may file with the hearing body a response to the issues raised in the notice, with a copy to the ~~regional reliability organization or~~ regional entity.
4. **Hearing by Compliance and Certification Committee** — The NERC Compliance and Certification Committee shall provide representatives of the ~~regional reliability organization,~~ regional entity, ~~or~~ registered entity, and the NERC Compliance Monitoring and Enforcement Program an opportunity to be heard and shall decide the matter based upon the filings and presentations made, with a written explanation of its decision.
5. **Appeal** — The ~~regional reliability organization,~~ regional entity, or registered entity may appeal the decision of the Compliance and Certification Committee by filing a notice of appeal with NERC's director of compliance no later than 21 days after issuance of the written decision by the Compliance and Certification Committee. The notice of appeal shall include the full text of the written decision of the Compliance and Certification Committee that is being appealed, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not presented to the Compliance and Certification Committee.
6. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of appeal, the NERC Compliance Monitoring and Enforcement Program staff may file its response to the issues raised in the notice of appeal, with a copy to the entity filing the notice.

7. **Reply** — The entity filing the appeal may file a reply within 7 days.
8. **Decision** — The Compliance Committee of the NERC Board of Trustees shall decide the appeal, in writing, based upon the notice of appeal, the record, the response, and any reply. At its discretion, the Compliance Committee may invite representatives of the ~~regional reliability organization~~, regional entity, or registered entity, and the NERC Compliance Monitoring and Enforcement Program to appear before the Committee. Decisions of the Compliance Committee shall be final, except for further appeal to the applicable ERO governmental authority.
9. **Impartiality** — No member of the Compliance and Certification Committee or the Board of Trustees Compliance Committee having an actual or perceived conflict of interest in the matter may participate in any aspect of the challenge or appeal except as a party or witness.
10. **Expenses** — Each party in the challenge and appeals processes shall pay its own expenses for each step in the process.
11. **Non-Public Proceedings** — All challenges and appeals shall be closed to the public to protect confidential information.

410. Appeals from Final Decisions of Regional Entities

1. **Time for Appeal** — An owner, operator or user of the bulk-power system wishing to appeal from a final decision of a regional entity that finds a violation of a reliability standard or imposes a penalty for violation of a reliability standard shall file its notice of appeal with NERC's director of compliance, with a copy to the regional entity, no later than 21 days after issuance of the final decision of the regional entity hearing body. The same appeal procedures will apply regardless of whether the matter first arose in a compliance violation investigation, compliance audit or self-report, or in a reliability readiness evaluation.
2. **Contents** — The notice of appeal shall include the full text of the final decision of the regional entity hearing body that is being appealed, a concise statement of the error or errors contained in the final decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not first presented during the compliance hearing before the regional entity hearing body.
3. **Response by Regional Entity** — Within 21 days after receiving a copy of the notice of appeal, the regional entity shall file the entire record of the matter with NERC's director of compliance, with a copy to the entity filing the notice, together with its response to the issues raised in the notice of appeal.
4. **Reply** — The entity filing the appeal may file a reply to the regional entity within 7 days.

5. **Decision** — The Compliance Committee of the NERC Board of Trustees shall decide the appeal, in writing, based upon the notice of appeal, the record of the matter from the regional entity, the response, and any reply filed with NERC. At its discretion, the Compliance Committee may invite representatives of the entity making the appeal and the regional entity to appear before the Committee. Decisions of the Compliance Committee shall be final, except for further appeal to the applicable ERO governmental authority.
6. **Expenses** — Each party in the appeals process shall pay its own expenses for each step in the process.
7. **Non-Public Proceedings** — All appeals shall be closed to the public to protect confidential information.

411. Hold Harmless

A condition of invoking the challenge or appeals processes under Section 409 or 410 is that the entity requesting the challenge or appeal agrees that neither NERC (defined to include its members, Board of Trustees, committees, subcommittees, staff and industry volunteers), any person assisting in the challenge or appeals processes, nor any company employing a person assisting in the challenge or appeals processes, shall be liable, and they shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the challenge or appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.

SECTION 500 — ORGANIZATION REGISTRATION AND CERTIFICATION

501. Scope of the Organization Registration and Certification Program

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

The purpose of the compliance registry will be to clearly identify those entities that are responsible for compliance with reliability standards. Organizations listed on the registry will be responsible for knowing the content of and for complying with the NERC reliability standards. Organizations listed in the registry are not, nor do they become, members of NERC, a regional entity, or a regional reliability organization by virtue of being listed in the compliance registry. Membership in NERC is governed by Article II of NERC's bylaws; membership in a regional entity or regional reliability organization is governed by that entity's bylaws or rules.

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

1. **Compliance Registry** — NERC shall establish and maintain a compliance registry of the bulk power system owners, operators, and users that are subject to approved reliability standards.
 - 1.1 The registry shall set forth the identity and functions performed for each organization responsible for meeting requirements of the reliability standards including: reliability coordinators, balancing authorities, transmission operators, transmission owners, generator operators, generator owners, transmission service providers, planning authorities, transmission planners, resource planners, load-serving entities, purchasing-selling entities, and distribution providers. Bulk power system owners, operators, and users shall provide to NERC and the applicable regional entity such information as is necessary to complete the registration.
 - 1.2 NERC and regional entities assisting NERC in the development of the compliance registry shall consider the following factors in determining which organizations should be placed in the registry:
 - 1.2.1 Owners and operators of bulk power system facilities will generally be included in the registry;

- 1.2.2 As identified by regional reliability organizations, electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher will be considered part of the bulk power system;
- 1.2.3 Radial transmission facilities serving only load with one transmission source, without more, will not be considered part of the bulk power system;
- 1.2.4 A customer that receives electric service at retail and does not otherwise directly receive, sell, purchase, or transmit power over the bulk power system or own, operate, maintain, or control facilities or systems that are part of the bulk power system will not in general be considered a user of the bulk power system;
- 1.2.5 An entity directly connected to the bulk power system selling, purchasing, or transmitting electric energy over the bulk power system will generally be considered a user of the bulk power system, unless the entity's actions or facilities have no material impact on the bulk power system;
- 1.2.6 Notwithstanding the other considerations in this Section 1.2, if the consequences of an entity's actions or inactions could have a material impact on the bulk power system, that entity may be considered a user of the bulk power system;
- 1.2.7 (a) A generation or transmission cooperative, a joint-action agency or another organization (a Joint Registration Organization or JRO) may be registered, in lieu of each of the JRO's members or related entities being registering individually, by the JRO accepting the reliability functions identified in Section 1.1 above, or (b) a JRO and its members or related entities may enter into a written agreement as to which of them will be responsible for one or more reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards, in either case in accordance with the provisions specified in Section 507 (each of (a) and (b), a "joint registration").

For purpose of this Section 501.1.2.7 and Section 507, a "related entity" is an entity whose operations in relation to the operation of the JRO make it feasible for the JRO to accept responsibility for reliability functions for which the related entity would otherwise be responsible. A non-exclusive list of examples of JROs and related entities includes (i) a balancing authority or a transmission

provider as the JRO, and (ii) a load-serving entity or a distribution provider within the balancing authority's control area or receiving transmission services from the transmission provider, as the related entity.

- 1.3 NERC and the regional entities shall use the following procedure for establishing and maintaining the compliance registry:
 - 1.3.1 NERC shall notify each organization of its intent to place the organization on the compliance registry.
 - 1.3.2 Any organization receiving such a notice may challenge the decision to include it on the compliance registry by filing its written objection with NERC's director of compliance within 21 days stating the reasons it believes it should not be considered a bulk power system owner, operator, or user.
 - 1.3.3 The Compliance Committee of the Board of Trustees will promptly issue a written decision on the challenge, including the reasons for the decision.
 - 1.3.4 The decision of the Compliance Committee shall be final unless, within 21 days, the organization appeals the decision to the applicable governmental authority.
 - 1.3.5 At any time a person may recommend in writing, with supporting reasons, to the director of compliance that an organization be added to or removed from the compliance registry.
 - 1.3.6 The compliance registry shall be dynamic and be revised as necessary to take account of changing circumstances. NERC will take such recommendations, and other applicable information, under advisement as it determines whether an entity should be on the compliance registry.
 - 1.3.7 Each entity identified in the registry shall notify NERC and its corresponding regional entity of any changes in ownership, corporate structure, or similar matters that affect the entity's responsibilities with respect to the reliability standards. Failure to notify will not relieve the entity from any responsibility to comply with the reliability standards or shield it from any penalties or sanctions associated with failing to comply with such standards.
- 1.4 For all geographical or electrical areas of the bulk power system, the registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and required by the reliability standards to the fullest extent practical, and (2) there is no duplication of such coverage or of required oversight of such coverage.

In particular the process shall:

- 1.4.1 Ensure that all areas are under the oversight of one and only one reliability coordinator.
 - 1.4.2 Ensure that all balancing authorities and transmission operator entities² are under the responsibility of one and only one reliability coordinator.
 - 1.4.3 Ensure that all transmission elements of the bulk power system are the responsibility and under the control of one and only one transmission planner, planning authority, and transmission operator.
 - 1.4.4 Ensure that all loads and generators are under the responsibility and control of one and only one balancing authority.
 - 1.5 NERC shall maintain publicly available process documentation.
 - 1.6 NERC shall maintain the compliance registry of organizations responsible for meeting the requirements of the reliability standards currently in effect on its Web site and shall update the compliance registry monthly.
2. **Entity Certification** — NERC shall provide for certification of all entities with primary reliability responsibilities requiring certification as established in the NERC reliability standards. The NERC program shall:
- 2.1 Evaluate and certify the competency of entities performing reliability functions. The entities presently expected to be certified include reliability coordinators, transmission operators, and balancing authorities. Other entities may be added, as required, by approved reliability standards.
 - 2.2 Certify each entity's ability to meet the minimum requirements established by the NERC reliability standards for each function.
 - 2.3 Maintain process documentation.
 - 2.4 Maintain records of currently certified entities.
3. **Delegation and Oversight**

² Some organizations perform the listed functions (e.g., balancing authority, transmission operator) over areas that transcend the footprints of more than one reliability coordinator. Such organizations will have multiple registrations, with each such registration corresponding to that portion of the organization's overall area that is within the footprint of a particular reliability coordinator.

- 3.1 NERC may delegate the responsibilities of registration and certification to regional entities in accordance with requirements established by NERC. Delegation will be via the delegation agreement between NERC and the regional entity or other applicable agreement. The regional entity shall administer an organization registration and certification program to meet NERC's program goals and requirements.
- 3.2 NERC shall develop and maintain a plan to ensure the continuity of organization registration and certification within the geographic or electrical boundaries of a regional entity in the event that no entity is certified as a regional entity for that region, or the regional entity withdraws as a regional entity, or does not operate its organization registration and certification program in accordance with delegation agreements and other requirements.
- 3.3 NERC shall develop and maintain a program to monitor and oversee each regional entity registration and certification program that is delegated authority through a delegation agreement or other applicable agreement.
 - 3.3.1 This program shall monitor whether the regional entity carries out its organization registration and certification program in accordance with NERC requirements, and whether there is consistency, fairness of administration, and comparability of outcomes within each regional entity's certification and registration program and among all of the programs.
 - 3.3.2 Monitoring and oversight shall be accomplished through direct participation in certification audits and periodic reviews of program documents and records.

502. ERO Organization Registration and Certification Program Requirements

1. NERC shall have final authority in all matters constituting the organization registration and certification program.
 - 1.1 The roles and authority of regional entities in the program are delegated from NERC pursuant to the rules of procedure through regional delegation agreements or other applicable agreements.
 - 1.2 Processes for the program shall be owned by NERC; materials that each regional entity may use to participate in the program may be adapted by that organization subject to prior review and approval by NERC.
 - 1.3 Regional entities participating in the program shall perform their roles and responsibilities to meet NERC's requirements, as specified in the rules of procedure or NERC approved materials, including requirements for quality, thoroughness, timeliness, accuracy, efficiency, cost-effectiveness, and participation.

- 1.4 Regional entity's decisions to grant or deny certifications shall be subject to NERC review and action, including modification or reversal.
 - 1.5 Regional entity's decisions with respect to the use of the transitional certification processes, as now provided for within the NERC *Organization Registration and Certification Manual (Appendix 5)*, are subject to NERC review and action, including modification or reversal, should NERC deem such review or action warranted.
 - 1.6 Notwithstanding an entity's interest and right to object to the makeup of the certification team that will conduct the review of that entity, NERC, or the regional entity as authorized by NERC, will have final authority on the membership and member roles of that team.
 - 1.7 NERC, or the regional entity as authorized by NERC, shall make all assessments and decisions with respect to all aspects of the organization registration and certification program, including the completeness and accuracy of entities' applications.
2. To ensure consistency and fairness of the program, NERC shall develop procedures to be used by all regional entities in carrying out their organization registration and certification programs, in accordance with the following criteria:
- 2.1 NERC and the regional entities shall have data management processes and procedures that provide for integrity and retention of data and information collected.
 - 2.2 To maintain the integrity of the NERC Organization Registration and Certification Program, NERC, regional entities, certification audit team members, and committee members shall maintain the confidentiality of information provided by entities in order to become registered or certified.
 - 2.2.1 NERC and the regional entities shall have appropriate codes of conduct and confidentiality agreements for staff and other certification audit participants. Individuals not bound by ERO or approved regional entity codes of conduct and who serve on certification-related committees or audit teams shall sign an ERO confidentiality agreement prior to participating on the committee or team.
 - 2.2.2 Staff, committee, and audit team members shall maintain the confidentiality of any certification-related discussions or documents that are designated as confidential (see Section 1500 for types of confidential information). Staff, committee, and audit team members shall treat as confidential the individual comments expressed during audits and report-drafting sessions.

- 2.2.3 Copies of notes, draft reports, and other interim documents developed or used during a certification audit shall be destroyed after the public posting of a final, uncontested report.
 - 2.2.4 Information deemed by an entity, a regional entity, or NERC as confidential or critical energy infrastructure information shall not be distributed outside of a committee or team, or released publicly.
 - 2.2.5 In the event that a staff, committee, or audit team member violates any of the confidentiality rules set forth above, the staff, committee, or audit team member and any member organization with which the individual is associated may be subject to immediate dismissal from the audit team and may be prohibited from future participation in compliance program activities by the regional entity or NERC.
 - 2.2.6 NERC shall develop and provide training in auditing skills to all individuals who participate in certification audits. Training for ERO and regional entity personnel, as well as audit team leaders, shall be more comprehensive than training given to industry experts, regional entity members, and volunteers. Training for regional entity members and volunteers may be delegated to the regional entity.
- 2.3 An entity that is determined to be competent to perform a function after completing all certification requirements shall be deemed certified by NERC to perform that function.
- 2.3.1 An entity deemed certified by NERC to perform a function shall be considered and may be referred to, for example, as a certified transmission operator, certified balancing authority, or certified reliability coordinator. Only entities that have received such certifications from NERC shall be so designated.
 - 2.3.2 NERC shall award certification to an entity only after it has demonstrated full competency to all certification requirements. An entity shall be awarded certification only for each function for which it has demonstrated full competency

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

- 1. **Delegation** — Recognizing the regional entity’s knowledge of and experience with their members, NERC may delegate responsibility for organization registration and certification to the regional entity through a delegation agreement or such responsibilities may be established through another applicable agreement.

2. **Registration** — The following organization registration activities shall be performed by the regional entity in accordance with the NERC Organization Registration and Certification Procedures, which are incorporated into the Rules of Procedure as **Appendix 5**.
 - 2.1 Entities seeking registration shall contact the regional entity in which they operate to become registered and, if necessary, certified.
 - 2.2 Regional entities shall verify that all balancing authorities and transmission operators are under the responsibility of one and only one reliability coordinator.
 - 2.3 Regional entities shall verify that all transmission elements of the bulk power system operated within their geographic boundaries are under the authority and control of one and only one transmission planner, planning authority, transmission owner, and transmission operator.
 - 2.4 Regional entities shall verify that all loads and generation sources within their geographic boundaries are under the authority and control of one and only one balancing authority.
 - 2.5 Regional entities shall verify that no geographical or electrical areas of the bulk power system within their boundaries have duplication of coverage or are lacking an entity to perform required duties and tasks as identified in the reliability standards.
3. **Certification** — The following organization certification activities shall be performed by the regional entity in accordance with an approved ERO delegation agreement or another applicable agreement:
 - 3.1 Entities seeking certification to perform one of the functions requiring certification shall contact the regional entity for the region(s) in which they operate to apply for certification. NERC shall have oversight of the regional entity's certification activities and processes.
 - 3.2 Entities seeking certification and other affected operators shall provide all information and data requested by NERC or the regional entity to conduct the certification process, in accordance with 18 C.F.R. Section 39.2 in the United States.
 - 3.3 Regional entities shall contact entities directly and provide notice of the requirement to be certified by NERC and initiate the process to certify any entities that do not voluntarily contact the regional entity or NERC.
 - 3.4 Regional entities shall notify NERC of all certification applicants, including those not voluntarily seeking certification.

- 3.5 The regional entity shall establish certification procedures to include audit processes, schedules and deadlines, expectations of the applicants and all entities participating in the audit and certification processes, and requirements for certification auditors.
 - 3.5.1 The regional entity certification procedures will include provisions for on-site visits to the applicant's facilities to review the data collected through questionnaires, interviewing the operations and management personnel, inspecting the facilities and equipment (and requesting a demonstration of all tools identified in the certification standard), reviewing all necessary documents and data (including all agreements, processes, and procedures identified in the certification standard), reviewing certification documents and projected system operator work schedules, and reviewing any additional documentation that is needed to support the completed questionnaire or inquiries arising during the site visit.
 - 3.5.2 All industry experts and regional members participating in certification audits shall successfully complete appropriate training provided by NERC or the regional entity prior to performing an audit.
 - 3.5.3 The regional entity certification procedures will provide for preparation of a written report by the audit team detailing any deficiencies that must be resolved prior to certification along with any other recommendations for consideration by the entity, the regional entity, or NERC.
 - 3.5.4 The regional entity shall evaluate the competency of entities requiring certification to meet the minimum requirements established by the standards for each such function based on the requirements established by NERC.

504. Appeals

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

505. Program Maintenance

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

506. Independent Audit of NERC Organization Certification Program

1. NERC shall provide for an independent audit of its organization certification program at least once every three years, or more frequently, as determined by the board. The audit shall be conducted by independent expert auditors as selected by the board.
2. The audit shall evaluate the success and effectiveness of the NERC organization certification program in achieving its mission.
3. The final report shall be posted by NERC for public viewing according to the reporting and disclosure process in Section 408.
4. If the audit report includes recommendations to improve the program, the administrators of the program shall provide a written response and plan to the board within 30 days of the final report.

507. Provisions Relating to Joint Registrations and Joint Registration Organizations

1. **Registration by a JRO.** In addition to registering as the entity responsible for all functions that a JRO performs itself, a JRO may register on behalf of one or more of its members or related entities for one or more functions as to which such members or related entities would otherwise be required to register, and thereby accept on behalf of such members or related entities all compliance responsibility, including reporting requirements, for all requirements of reliability standards applicable to the function or functions for which the JRO has registered on behalf of its members or related entities. Any entity seeking to register as a JRO for any or all requirements identified in the reliability standards that would otherwise be the responsibility of one or more of its members or related entities shall provide to the applicable regional entity information, in the form requested by the regional entity, sufficient to identify whether the entity or its member(s) or related entities will be responsible for compliance with each provision of the reliability standards for the applicable functional responsibilities covered by the joint registration. The JRO must identify its primary compliance contact. The JRO primary compliance contact is responsible for providing all of the information and data, including submitting reports, as needed by the regional entity for performing assessments of compliance.
2. **Joint registration pursuant to written agreement.** Where a JRO and any of its members or related entities agree, in writing, upon a division of compliance responsibility among them for one or more reliability standard(s) applicable to a particular function, and/or for one or more requirements within particular reliability standard(s), both the JRO and such member(s) or related entit(ies) shall register as an organization responsible for that function. The JRO and its

member(s) or related entit(ies) must have a written agreement that clearly specifies their respective responsibilities, which shall be submitted as part of the joint registration. Neither NERC nor the regional entity shall be parties to any such agreement between a JRO and its member or related entit(ies), nor shall NERC or the regional entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the joint registration.

3. NERC or the regional entity may request clarification of any list submitted to it that identifies the compliance responsibilities of the JRO and its member(s) or related entit(ies), and may request such additional information as NERC or the regional entity deems appropriate.
4. The regional entity shall notify NERC of each joint registration that the regional entity accepts. The regional entity's acceptance of a joint registration shall be a representation by the regional entity to NERC that the regional entity has concluded the joint registration will result in (1) no areas lacking any entities to perform the duties and tasks identified in and required by the reliability standards, and (2) no unnecessary duplication of such coverage of areas by entities to perform the duties and task identified in and required by the reliability standards or of required oversight of such coverage.
5. NERC shall maintain, and shall post on its web site, a Joint Registration Organization registry listing all joint registrations that have been accepted by NERC or by a regional entity and the reliability standards or requirements thereof for which each JRO and each of its members or related entities is responsible under the joint registration. The postings on NERC's web site shall clearly identify the compliance responsibilities of the JRO and of each of its member(s) or related entit(ies). Such postings are intended to enable reliability coordinators and other system operators to be fully aware of responsibilities and chains of command in order to respond quickly and decisively to system operation events.
6. Annually following submission of a joint registration, the JRO shall provide the regional entity with a list, in a form specified by the regional entity, that identifies the members or related entities and the functions for which the JRO has registered on behalf of such members or related entities and for which the JRO assumes compliance responsibility. Additionally, a JRO shall provide a revised list of compliance responsibilities to the regional entity each time the JRO accepts additional compliance responsibilities for a member or related entity or for a new member or related entity and each time that any compliance reliability reverts from the JRO to a member or related entity. The regional entity shall promptly notify NERC of each such revision.
7. In the event of a violation of a reliability standard or of a requirement of a reliability standard, the JRO or its member or related entity identified in the Joint Registration Organization registry as responsible for such reliability standard or requirement shall be identified in the notice of alleged violation and shall be

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

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

SECTION 600 — PERSONNEL CERTIFICATION

601. Scope of Personnel Certification

Maintaining the reliability of the bulk electric system through implementation of the reliability standards requires skilled, trained and qualified system operators. The System Operator Certification Program provides the mechanism to ensure system operators are provided the education and training necessary to obtain the essential knowledge and skills and are therefore qualified to operate the bulk electric system. NERC, as the ERO, will ensure skilled, trained, and qualified system operators through the System Operator Certification Program.

NERC shall develop and maintain a personnel certification program to evaluate individuals and to issue credentials to individuals who demonstrate the required level of competence. A current version of such a program is the *System Operator Certification Program Manual*, which is incorporated into these rules as **Appendix 6**.

602. Structure of ERO Personnel Certification Program

1. The NERC personnel certification program shall be international in scope.
2. The personnel certification program shall have a governing body that (1) is able to independently exercise decision-making for all matters pertaining to certification, (2) includes individuals from the discipline being certified and whose composition addresses the needs of the users of the program (e.g., employers, regulators, etc.), and (3) has representation for each specialty or level within a discipline.
3. NERC shall maintain a nominating process for membership in the governing body. Nominations shall be open to all interested parties and self-nominations shall be accepted. The NERC Board of Trustees shall appoint members to the governing body from among those nominated. The members of the governing body shall serve at the pleasure of the board.
4. The personnel certification program governing body shall have control over the matters related to the personnel certification and recertification programs listed below, without being subject to approval by any other body.
 - 4.1 Policies and procedures, including eligibility requirements and application processing.
 - 4.2 Requirements for personnel certification, maintaining certification, and recertification.
 - 4.3 Examination content, development, and administration.
 - 4.4 Examination cut score.
 - 4.5 Grievance and disciplinary processes.

- 4.6 Governing body and subgroup(s)' meeting rules including agenda, frequency, and related procedures.
 - 4.7 Subgroup(s) appointments and work assignments.
 - 4.8 Publications about personnel certification and recertification.
 - 4.9 Setting fees for application, and all other services provided as a part of the personnel certification and recertification activities.
 - 4.10 Program funding, spending, and budget authority. Financial matters related to the operation of the program shall be segregated from other NERC activities.
5. The personnel certification program shall utilize written procedures for the selection of members of the governing body that prohibit the governing body from selecting a majority of its successors.
 6. The personnel certification program shall be separate from the accreditation and education functions of NERC in related disciplines.
 7. No member of the personnel certification program governing body or staff member working with the personnel certification program governing body shall have or exercise any authority or responsibility for compliance matters related to reliability standards concerning personnel certification.

603. Candidate Testing Mechanisms

1. The personnel certification program shall utilize reliable testing mechanisms to evaluate individual competence in a manner that is objective, fair to all candidates, job-related, and based on the knowledge and skill needed to function in the discipline.
2. The personnel certification program shall implement a formal policy of periodic review of the testing mechanisms to ensure ongoing relevance of the mechanisms to knowledge and skill needed in the discipline.
3. The personnel certification program shall utilize policies and procedures to ensure that all test administration and development materials are secure and demonstrate that these policies and procedures are consistently implemented.
4. The personnel certification program shall establish pass/fail levels that protect the public with a method that is based on competence and generally accepted in the psychometric community as being fair and reasonable.
5. The personnel certification program shall conduct ongoing studies to substantiate the reliability and validity of the testing mechanisms.

6. The personnel certification program shall utilize policies and procedures that govern how long examination records are kept in their original format.
7. The personnel certification program shall demonstrate that different forms of the testing mechanisms assess equivalent content and that candidates are not penalized for taking forms of varying difficulty.

604. Public Information About the Personnel Certification Program

1. The personnel certification program shall provide for publishing and availability of general descriptive material on the procedures used in examination construction and validation; all eligibility requirements and determination; fees; and examination administration documents, including: reporting of results, recertification requirements, and disciplinary and grievance procedures.
2. The personnel certification program shall publish and make available a comprehensive summary or outline of the information, knowledge, or functions covered by the examination.
3. The personnel certification program shall publish and make available at least annually a summary of certification activities for the program, including at least the following information: number of examinations delivered, the number passed, the number failed, and the number certified.

605. Responsibilities to Applicants for Certification or Recertification

The personnel certification program:

1. Shall not discriminate among applicants as to age, gender, race, religion, national origin, disability, or marital status and shall include a statement of non-discrimination in announcements of the program.
2. Shall comply with all requirements of applicable federal and state/provincial laws with respect to all certification and recertification activities, and shall require compliance of all contractors and/or providers of services.
3. Shall make available to all applicants copies of formalized procedures for application for, and attainment of, personnel certification and recertification and shall uniformly follow and enforce such procedures for all applicants.
4. Shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.
5. Shall provide competently proctored examination sites.
6. Shall uniformly report examination results to applicants in a timely manner.
7. Shall give applicants failing the examination information on general content areas of deficiency.

8. Shall implement policies and procedures providing due process for applicants questioning eligibility determination, examination results, and certification status, and shall publish this information. A current version of such a procedure is the *NERC System Operator Certification Dispute Resolution Process*, which is incorporated into these rules as part of **Appendix 6**.
9. Shall develop and maintain a program manual containing the processes and procedures for applicants for certification and recertification.

606. Responsibilities to the Public and to Employers of Certified Practitioners

The personnel certification program:

1. Shall demonstrate that the testing mechanisms adequately measure the knowledge and skill required for entry, maintenance, and/or advancement in the profession for each position to be certified.
2. Shall award certification and recertification only after the skill and knowledge of the individual have been evaluated and determined to be acceptable.
3. Shall periodically publish or maintain, in an electronic format, a current list of those persons certified in the programs and have policies and procedures that delineate what information about a credential holder may be made public and under what circumstances.
4. Shall have formal policies and procedures for discipline of a credential holder, including the revocation of the certificate, for conduct deemed harmful to the public or inappropriate to the discipline (e.g., incompetence, unethical behavior, physical or mental impairment affecting performance). These procedures shall incorporate due process. The current procedure is the *NERC Certified System Operator Credential Disciplinary Action Procedure*, which is incorporated into these rules as part of **Appendix 6**.
5. Shall demonstrate that any title or credential awarded accurately reflects or applies to the practitioner's daily occupational or professional duties and is not confusing to employers, consumers, regulators, related professions, and/or other interested parties.

SECTION 700 — RELIABILITY READINESS EVALUATION AND IMPROVEMENT

701. Scope of the Reliability Readiness Evaluation and Improvement Program

The readiness evaluations are designed to ensure that operators of the bulk electric system have the facilities, tools, processes, and procedures in place to operate reliably under future conditions. The evaluations help balancing authorities, transmission operators, reliability coordinators, and others that provide support to these operators recognize and assess their reliability responsibilities and evaluate how their operations support those responsibilities. The evaluation team may also evaluate transmission planner and transmission owner functions in concert with the evaluation of reliability coordinators, balancing authorities, and transmission operators. NERC uses the results of these evaluations to champion the changes required to improve the reliability performance of these entities and achieve excellence in the assigned reliability functions and responsibilities. A companion goal of the program is to identify and promote examples of excellence within the industry.

Monitoring compliance with reliability standards provides only a historical perspective by determining if a registered entity has complied with the NERC reliability standards over some prescribed period in the past. An effective ERO will also recognize that monitoring compliance absent a system emergency or disturbance does not effectively preserve reliability or ensure the ability to perform and achieve excellence during a system emergency or disturbance.

NERC identifies those entities with primary reliability responsibilities and provides guidance to help them achieve operational excellence through the Reliability Readiness Evaluation and Improvement Program. This program recognizes that standards cannot prescribe all aspects of reliable operations and that NERC standards present a threshold, not a target, for performance and excellence in the industry. Balancing authorities, transmission operators, reliability coordinators, and others that provide support to these operators must be ready to perform under emergency conditions while striving for excellence in their assigned reliability functions and responsibilities.

NERC maintains a reliability readiness evaluation and improvement program for the purpose of promoting compliance with reliability standards and enhancing the reliability of the bulk power system. The program assesses the reliability readiness of reliability coordinators, balancing authorities, transmission operators, and others performing delegated tasks for these operators to operate the bulk power system reliably, and to identify opportunities for improvement. NERC may also create sector forums (see section 712) to enhance the reliability of the bulk power system by providing a mechanism for members of a particular industry sector, using peer review and mutual assistance, to identify best practices in the safety and reliability of the bulk power system, to disseminate lessons learned from disturbances, near misses, and other events, and to encourage all members of the sector to implement those practices and lessons on a timely basis. The Reliability Readiness Evaluation and Improvement Program will coordinate with the sector forums as appropriate to provide input from the readiness evaluations.

702. Structure of the Reliability Readiness Evaluation and Improvement Program

1. NERC shall have overall responsibility for coordinating readiness evaluations in accordance with the NERC *Readiness Evaluation Procedure*, the current version of which is incorporated into these rules as **Appendix 7**. These rules of procedure take precedence for any conflicts or inconsistencies that exist with the NERC *Readiness Evaluation Procedure*.
2. NERC staff shall have the primary responsibility for executing the following procedural steps: (1) development of the overall schedule in conjunction with the appropriate regional entity to coordinate evaluation activities; (2) initiation of the evaluation process for each entity; (3) provision of evaluation questionnaires, processes, data requests, documentation, and criteria; (4) identification of readiness evaluation team members; (5) coordination of evaluated entity and neighboring entity questionnaires; and (6) publication of findings.
3. The NERC evaluation team shall perform the following functions: (1) review the entity's questionnaire responses and documentation and research any issues or events identified; (2) perform the on-site evaluations; and (3) prepare a report of findings.

703. Scheduling of Readiness Evaluations

1. NERC staff in conjunction with the regional entities shall prepare a three-year cycle of readiness evaluations that will be updated annually by a date specified by NERC.
2. NERC shall obtain from the regional entity the identity of a contact person at each entity to be evaluated.
3. Readiness evaluations and compliance audits shall be conducted with separate processes, but may occur concurrently if separate personnel are used.

704. Resources for Readiness Evaluations

1. NERC shall select an evaluation team in advance of each evaluation according to a schedule specified by NERC.
2. The evaluation team shall consist of members possessing expertise and experience specified by NERC.
3. The evaluation team shall be of a size and composition specified by NERC.
4. If an entity to be evaluated raises an objection to an evaluation team member's participation, it must do so in writing to NERC stating clearly the basis for the objection. Upon receipt of such objection, the Director of NERC's Readiness Evaluation and Improvement program will attempt to resolve the issue to the mutual agreement of the entity being evaluated and the individual and/or entity for whom the individual is employed, utilizing guidance from the regional entities

as appropriate.

If this process does not result in a mutually acceptable agreement, the Director will resolve the objection based on the following factors:

- a. Team member was previously employed by entity to be evaluated within the previous three years;
 - b. Team member was previously employed by entity to be evaluated and whose employment ended unfavorably;
 - c. Team member is in active litigation with the entity to be evaluated;
 - d. Team member has a direct financial interest in the entity to be evaluated;
 - e. Team member is employed in a company under the same corporate umbrella as the entity to be evaluated;
 - f. The team member's employer and the entity to be evaluated are engaged in active litigation; and
 - g. Other matters that may interfere with the exercise of independent judgment.
5. NERC shall develop and provide training in evaluation skills to all individuals who participate in readiness evaluations. Training for NERC evaluation team leaders and regional entity personnel shall be more comprehensive than training given to industry experts and regional members.
 6. All team members and observers shall sign and abide by a NERC confidentiality agreement prior to participating in any of the evaluation activities unless bound by NERC or other codes of conduct acknowledged by NERC to be acceptable. Copies of the signed confidentiality agreements shall be maintained by NERC and be available upon request by the evaluated entity.
 7. To maintain the focus and size of the evaluation team, the use of observers will be limited. Observers must be expressly agreed upon by both NERC and the entity being evaluated. The role of observers is limited to observing the process. Observers shall not participate in the creation and editing of the report or its findings, or interfere with the evaluation process. The team leader may remove any observer from the evaluation who is not abiding by these criteria.

705. Pre-Readiness Evaluation Activities

NERC will require certain information to perform readiness evaluations of operating entities. These entities shall provide to NERC such information as is necessary to conduct the readiness evaluations.

1. Prior to an evaluation, NERC shall provide the entity a request for information and a questionnaire. The entity shall return the requested information and the completed questionnaire according to a schedule specified by NERC. In its

submission to the request for information, the entity to be evaluated shall identify all tasks that have been delegated to another entity.

2. NERC shall provide a questionnaire to neighboring operating entities with which the evaluated entity routinely interacts. The neighboring operating entities shall return the completed questionnaires within a period of time specified by NERC.
3. Prior to the evaluation, NERC shall provide an evaluation agenda to the entity to be evaluated.
4. The evaluation team will receive the following information upon receipt of a signed confidentiality agreement according to a schedule specified by NERC.
 - a. The evaluated entity's completed questionnaire and supporting documentation;
 - b. The neighboring operating entities' completed questionnaires; and
 - c. The on-site agenda.
5. The evaluation team will coordinate before the on-site evaluation begins to review questionnaire responses, identify areas requiring further investigation, discuss concerns, coordinate the interview process, and assign responsibilities during the on-site visit.

706. On-Site Activities for the Readiness Evaluation

1. The evaluation team will meet on-site for a period defined by NERC to conduct the readiness evaluation according to the agenda provided in advance. The team will conduct interviews with personnel, review documentation, and make observations about the entity's tools, facilities, and processes.
2. The team's findings shall be based on data collected from the entity's questionnaire and documentation, neighboring operating entities' questionnaires, and observations and information collected during the on-site visit.
3. Evidence of possible noncompliance with a reliability standard shall be reported to NERC and to the applicable regional entity for resolution through the applicable Compliance Monitoring and Enforcement Program. If the issue is judged to be an immediate threat to reliability, the notification to NERC and the regional entity shall be made within 24 hours of discovery. Possible noncompliance with a NERC reliability standard will not be identified in the readiness evaluation report.
4. Upon completion of the on-site evaluation, the team shall make a presentation to the evaluated entity of preliminary findings and recommendations that will be included in the final report.

707. Preparation and Posting of the Final Report

1. The evaluation team leaders shall prepare a draft report. The report will be sent to the team for review, within a period of time after the evaluation specified by NERC.
2. The evaluation team shall have a period of time specified by NERC to respond to the draft report. If a team member does not respond within the allotted time, such non-response shall be considered agreement with the contents of the report.
3. The draft report shall then be sent to the evaluated entity for its review to ensure that there are no factual errors in the report. The entity shall respond within a period of time specified by NERC. If the entity does not respond within the specified time, such non-response shall be considered agreement with the content of the report. The entity may provide feedback in the form of corrections and clarifications that will be considered by the evaluation team for inclusion in the final report.
4. After agreeing on any final corrections, the evaluation team may elect to provide the evaluated entity the opportunity to review the changes if deemed significant. The team shall then post the final report on the NERC Web site within a period of time from the on-site evaluation specified by NERC. Information deemed to be confidential information shall be redacted prior to posting. The entity will make the determination about what information will be redacted.
5. Should the entity wish to provide comments regarding the final report, evaluation processes, or findings, the entity may provide a statement in writing that will be posted on the NERC Web site in conjunction with the final report.
6. In response to the posted evaluation report and within a period of time after the posting specified by NERC, the entity shall provide a response plan to NERC addressing the report recommendations, including a timeline for implementation. The response plan shall be published on the NERC Web site when submitted by the entity. If the entity requests, NERC will offer assistance in developing a suitable response plan to address the report's recommendations. The entity shall notify NERC of its request for assistance.
7. NERC may direct that a mid-cycle follow-up evaluation be scheduled

708. Monitoring Recommendation Implementation

1. Evaluated entities may implement actions based on the recommendation or may review the recommendation and determine that no action is warranted or necessary and provide documentation on their decisions as well as the response plan.
2. NERC shall monitor the evaluated entity's implementation of the recommendations in the final report and the entity's response plan, and shall

report progress to the board. NERC may elect to use the regional entities to coordinate the request for updated recommendation status for members within its area of oversight.

709. Examples of Excellence

NERC shall identify and publish examples of excellence identified during the course of readiness evaluations. “Examples of excellence” are practices utilized by owners, operators and users of the bulk power system that are identified as being exceptionally effective in ensuring and protecting the reliability of the bulk power system. These “examples of excellence” may be identified through a readiness evaluation or submitted to NERC for an on-site evaluation.

710. Confidentiality Requirements for Readiness Evaluations and Evaluation Team Members

1. All information made available or created during the course of the evaluation including, but not limited to, data, documents, observations and notes, shall be maintained as confidential by all evaluation team members, in accordance with the requirements of Section 1500.
2. Evaluation team members are obligated to destroy all confidential evaluation notes following the posting of the final report.
3. NERC will retain evaluation-related documentation, notes, and materials for a period of time as defined by NERC.

711. Independent Audit of the Reliability Readiness Evaluation and Improvement Program

1. NERC shall provide for an independent audit of its reliability readiness evaluation and improvement program at least once every three years or more frequently as determined by the board. The audit shall be conducted by independent expert auditors as selected by the board.
2. The audit shall evaluate the success and effectiveness of the NERC reliability readiness evaluation and improvement program in achieving its mission.
3. If the audit report includes recommendations to improve the reliability readiness evaluation and improvement program, the administrators of the program shall provide a written response and plan to the board within 30 days of the final report.
4. The final report shall be posted by NERC for public viewing on its Web site. Confidential information shall be redacted according to NERC procedures and not released publicly.

712. Formation of Sector Forum

1. NERC will form a sector forum at the request of any five members of NERC that share a common interest in the safety and reliability of the bulk power system.

The members of sector forum may invite such others of the members of NERC to join the sector forum as the sector forum deems appropriate.

2. The request to form a sector forum must include a proposed charter for the sector forum. The board must approve the charter.
3. NERC will provide notification of the formation of a sector forum to its membership roster. Notices and agendas of meetings shall be posted on NERC's Web site.
4. A sector forum may make recommendations to any of the NERC committees and may submit a standards authorization request to the NERC *Reliability Standards Development Procedure*.

SECTION 800 — RELIABILITY ASSESSMENT AND PERFORMANCE ANALYSIS

801. Objectives of the Reliability Assessment and Performance Analysis Program

The objectives of the NERC reliability assessment and performance analysis program are to: (1) conduct, and report the results of, an independent assessment of the overall reliability and adequacy of the interconnected North American bulk power systems, both as existing and as planned; (2) analyze off-normal events on the bulk power system; (3) identify the root causes of events that may be precursors of potentially more serious events; (4) assess past reliability performance for lessons learned; (5) disseminate findings and lessons learned to the electric industry to improve reliability performance; and (6) develop reliability performance benchmarks. The final reliability assessment reports shall be approved by the board for publication to the electric industry and the general public.

802. Scope of the Reliability Assessment Program

1. The scope of the reliability assessment program shall include:
 - 1.1 Review, assess, and report on the overall electric generation and transmission reliability (adequacy and operating reliability) of the interconnected bulk power systems, both existing and as planned.
 - 1.2 Assess and report on the key issues, risks, and uncertainties that affect or have the potential to affect the reliability of existing and future electric supply and transmission.
 - 1.3 Review, analyze, and report on regional self-assessments of electric supply and bulk power transmission reliability, including reliability issues of specific regional concern.
 - 1.4 Identify, analyze, and project trends in electric customer demand, supply, and transmission and their impacts on bulk power system reliability.
 - 1.5 Investigate, assess, and report on the potential impacts of new and evolving electricity market practices, new or proposed regulatory procedures, and new or proposed legislation (e.g. environmental requirements) on the adequacy and operating reliability of the bulk power systems.
2. The reliability assessment program shall be performed in a manner consistent with the reliability standards of NERC including but not limited to those that specify reliability assessment requirements.

803. Reliability Assessment Reports

The number and type of periodic assessments that are to be conducted shall be at the discretion of NERC. The results of the reliability assessments shall be documented in three reports: the long-term and the annual seasonal (summer) and the annual seasonal (winter) assessment reports. NERC shall also conduct special reliability assessments from time to time as circumstances warrant. The reliability assessment reports shall be reviewed and approved for publication by the board. The three regular reports are described below.

1. **Long-Term Reliability Assessment Report** — The annual long-term report shall cover a ten-year planning horizon. The planning horizon of the long-term reliability assessment report shall be subject to change at the discretion of NERC. Detailed generation and transmission adequacy assessments shall be conducted for the first five years of the review period. For the second five years of the review period, the assessment shall focus on the identification, analysis, and projection of trends in peak demand, electric supply, and transmission adequacy, as well as other industry trends and developments that may impact future electric system reliability. Reliability issues of concern and their potential impacts shall be presented along with any mitigation plans or alternatives. The long-term reliability assessment reports will generally be published in the fall (September) of each year. NERC will also publish electricity supply and demand data associated with the long-term reliability assessment report.
2. **Summer Assessment Report** — The annual summer seasonal assessment report typically shall cover the four-month (June–September) summer period. It shall provide an overall perspective on the adequacy of the generation resources and the transmission systems necessary to meet projected summer peak demands. It shall also identify reliability issues of interest and regional and subregional areas of concern in meeting projected customer demands and may include possible mitigation alternatives. The report will generally be published in mid-May for the upcoming summer period.
3. **Winter Assessment Report** — The annual winter seasonal assessment report shall cover the three-month (December–February) winter period. The report shall provide an overall perspective on the adequacy of the generation resources and the transmission systems necessary to meet projected winter peak demands. Similar to the summer assessment, the winter assessment shall identify reliability issues of interest and regional and subregional areas of concern in meeting projected customer demands and may also include possible mitigation alternatives. The winter assessment report will generally be published in mid-November for the upcoming winter period.
4. **Special Reliability Assessment Reports** — In addition to the long-term and seasonal reliability assessment reports, NERC shall also conduct special reliability assessments on a regional, interregional, and interconnection basis as conditions warrant, or as requested by the board or applicable governmental authorities. The teams of reliability and technical experts also may initiate special assessments of

key reliability issues and their impacts on the reliability of a regions, subregions, or interconnection (or a portion thereof). Such special reliability assessments may include, among other things, operational reliability assessments, evaluations of emergency response preparedness, adequacy of fuel supply, hydro conditions, reliability impacts of new or proposed environmental rules and regulations, and reliability impacts of new or proposed legislation that affects or has the potential to affect the reliability of the interconnected bulk power systems in North America.

804. Reliability Assessment Data and Information Requirements

To carry out the reviews and assessments of the overall reliability of the interconnected bulk power systems, the regional entities, regional reliability organizations and other entities shall provide sufficient data and other information requested by NERC in support of the annual long-term and seasonal assessments and any special reliability assessments.

Some of the data provided for these reviews and assessment may be considered confidential from a competitive marketing perspective, a critical energy infrastructure information perspective, or for other purposes. Such data shall be treated in accordance with the provisions of Section 1500 – Confidential Information.

While the major sources of data and information for this program are the regional entities and regional reliability organizations, a team of reliability and technical experts is responsible for developing and formulating its own independent conclusions about the near-term and long-term reliability of the bulk power systems.

In connection with the reliability assessment reports, requests shall be submitted to each of the regional entities or regional reliability organizations for required reliability assessment data and other information, and for each region’s self-assessment report. The timing of the requests will be governed by the schedule for the preparation of the assessment reports.

The regional self-assessments are to be conducted in compliance with NERC standards and the respective regional planning criteria. The team(s) of reliability and technical experts shall also conduct interviews with the regional entities or regional reliability organizations as needed. The summary of the regional self-assessments that are to be included in the assessment reports shall follow the general outline identified in NERC’s request. This outline may change from time to time as key reliability issues change.

In general, the regional reliability self-assessments shall address, among other areas, the following topics: demand and net energy for load; assessment of projected resource adequacy; any transmission constraints that may impact bulk transmission adequacy and plans to alleviate those constraints; any unusual operating conditions that could impact reliability for the assessment period; fuel supply adequacy; the deliverability of generation (both internal and external) to load; and any other reliability issues in the region and their potential impacts on the reliability of the bulk power systems.

805. Reliability Assessment Process

Based on their expertise, the review of the collected data, the review of the regional self-assessment reports, and interviews with the regional entities or regional reliability organizations, as appropriate, the teams of reliability and technical experts shall perform an independent review and assessment of the generation and transmission adequacy of each region's existing and planned bulk power system. The results of the review teams shall form the basis of NERC's long-term and seasonal reliability assessment reports. The review and assessment process is briefly summarized below.

1. **Resource Adequacy Assessment** — The teams shall evaluate the regional demand and resource capacity data for completeness in the context of the overall resource capacity needs of the region. The team shall independently evaluate the ability of the regional entity or regional reliability organization members to serve their obligations given the demand growth projections, the amount of existing and planned capacity, including committed and uncommitted capacity, contracted capacity, or capacity outside of the region. If the region relies on capacity from outside of the region to meet its resource objectives, the ability to deliver that capacity shall be factored into the assessment. The demand and resource capacity information shall be compared to the resource adequacy requirements of the regional entity or regional reliability organization for the year(s) or season(s) being assessed. The assessment shall determine if the resource information submitted represents a reasonable and attainable plan for the regional entity or regional reliability organization and its members. For cases of inadequate capacity or reserve margin, the regional entity or regional reliability organization will be requested to analyze and explain any resource capacity inadequacies and its plans to mitigate the reliability impact of the potential inadequacies. The analysis may be expanded to include surrounding areas. If the expanded analysis indicates further inadequacies, then an interregional problem may exist and will be explored with the applicable regions. The results of these analyses shall be described in the assessment report.
2. **Transmission Adequacy and Operating Reliability Assessment** — The teams shall evaluate transmission system information that relates to the adequacy and operating reliability of the regional transmission system. That information shall include: regional planning study reports, interregional planning study reports, and/or regional operational study reports. If additional information is required, another data request shall be sent to the regional entity or regional reliability organization. The assessment shall provide a judgment on the ability of the regional transmission system to operate reliably under the expected range of operating conditions over the assessment period as required by NERC reliability standards. If sub-areas of the regional system are especially critical to the reliable operation of the regional bulk transmission system, these facilities or sub-areas shall be reviewed and addressed in the assessment. Any areas of concern related to the adequacy or operating reliability of the system shall be identified and reported in the assessment.

3. **Seasonal Operating Reliability Assessment** — The team(s) shall evaluate the overall operating reliability of the regional bulk transmission systems. In areas with potential resource adequacy or system operating reliability problems, operational readiness of the affected regional reliability organizations for the upcoming season shall be reviewed and analyzed. The assessment may consider unusual but possible operating scenarios and how the system is expected to perform. Operating reliability shall take into account a wide range of activities, all of which should reinforce the regional entity's or regional reliability organization's ability to deal with the situations that might occur during the upcoming season. Typical activities in the assessment may include: facility modifications and additions, new or modified operating procedures, emergency procedures enhancement, and planning and operating studies. The teams shall report the overall seasonal operating reliability of the regional transmission systems in the annual summer and winter assessment reports.

4. **Reporting of Reliability Assessment Results** — The teams of reliability and technical experts shall provide an independent assessment of the reliability of the regional entities, regional reliability organizations and the North American interconnected bulk power system for the period of the assessment. While the regional entities or regional reliability organizations are relied upon to provide the information to perform such assessments, the review team is not required to accept the conclusions provided by the regional entities or regional reliability organizations. Instead, the review team is expected, based on their expertise, to reach their own independent conclusions about the status of the adequacy of the generation and bulk power transmission systems of North America.

The review team also shall strive to achieve consensus in their assessments. The assessments that are made are based on the best information available at the time. However, since judgment is applied to this information, legitimate differences of opinion can develop. Despite these differences, the review team shall work to achieve consensus on their findings.

In addition to providing long-term and seasonal assessments in connection with the reliability assessment program, the review team of experts shall also be responsible for recommending new and revised reliability standards related to the reliability assessments and the reliability of the bulk power systems. These proposals for new or revised standards shall be entered into NERC's Standards Development Process.

Upon completion of the assessment, the team shall share the results with the regional entities or regional reliability organizations. The regional entities or regional reliability organizations shall be given the opportunity to review and comment on the conclusions in the assessment and to provide additional information as appropriate. The reliability assessments and their conclusions are the responsibility of NERC's technical review team and NERC.

The preparation and approval of NERC's reliability assessment reports shall follow a prescribed schedule including review, comment, and possible approval

by appropriate NERC committees. The long-term and seasonal (summer and winter) reliability assessment reports shall be further reviewed for approval by the board for publication to the electric industry.

806. Scope of the Reliability Performance and Analysis Program

The components of the program will include analysis of large-scale outages, disturbances, and near misses to determine root causes and lessons learned; identification and continuous monitoring of performance indices to detect emerging trends and signs of a decline in reliability performance; and communications of performance results, trends, recommendations, and initiatives to those responsible to take actions; followed with confirmation of actions to correct any deficiencies identified. Within NERC, the reliability performance program will provide performance results to the standards development, compliance enforcement, and reliability readiness programs to make the necessary adjustments to preserve reliability based on a risk-based approach. Recommendations that result from this program are reviewed as part of the NERC readiness evaluation and improvement program.

807. Analysis of Major Events

Responding to major blackouts and other system disturbances or emergencies can be divided into four phases: situational assessment and communications; situation tracking and communications; data collection, investigation, analysis, and reporting; and follow-up on recommendations.

1. NERC's role following a blackout or other major bulk power system disturbance or emergency is to provide leadership, coordination, technical expertise, and assistance to the industry in responding to the event. Working closely with the regional entities and reliability coordinators, NERC will coordinate and facilitate efforts among industry participants, and with state, federal, and provincial governments in the United States and Canada to support the industry's response.
2. When responding to any event where physical or cyber security is suspected as a cause or contributing factor to an event, NERC will immediately notify appropriate government agencies and coordinate its activities with them.
3. During the conduct of some NERC analyses, assistance may be needed from government agencies. This assistance could include: authority to require data reporting from affected or involved parties; communications with other agencies of government; investigations related to possible criminal or terrorist involvement in the event; resources for initial data gathering immediately after the event; authority to call meetings of affected or involved parties; and technical and analytical resources for studies.
4. NERC shall work with other participants to establish a clear delineation of roles, responsibilities, and coordination requirements among industry and government for the investigation and reporting of findings, conclusions, and recommendations related to major blackouts, disturbances, or other emergencies affecting the bulk power system with the objective of avoiding, to the extent possible, multiple

investigations of the same event. If the event is confined to a single regional entity, NERC representatives will participate as members of the regional entity analysis team.

5. NERC and applicable entity(s) shall apply the NERC *Blackout and Disturbance Response Procedures*, which are incorporated into these rules as **Appendix 8**. These procedures provide a framework to guide NERC's response to events that may have multiregional, national, or international implications. Experienced industry leadership shall be applied to tailor the response to the specific circumstances of the event. In accordance with that procedure, the NERC president will determine whether the event warrants analysis at the NERC-level. A regional entity may request that NERC elevate any analysis to a NERC level.
6. NERC will screen and analyze the findings and recommendations from the analysis, and those with generic applicability will be disseminated to the industry in the form of operations or equipment alerts of three possible types:
 - a. Advisory — these alerts are purely informational, intended to alert owners, operators, and users of the bulk power system to potential problems;
 - b. Recommendation — these alerts are intended to recommend specific action be taken by owners, operators, and users of the bulk power system;
 - c. Required Action — these alerts are intended to require specific action by owners, operators, and users of the bulk power system. Such alerts require NERC board approval before issuance.

808. Analysis of Off-Normal Events and System Performance

1. NERC shall analyze system and equipment performance events that do not rise to the level of a major blackout, disturbance, or system emergency, as described in section 807. The purpose of these analyses is to identify the root causes of events that may be precursors of potentially more serious events, to assess past reliability performance for lessons learned, and to develop reliability performance benchmarks and trends.
2. NERC will screen and analyze events for significance, and information from those with generic applicability will be disseminated to the industry in the form of operations or equipment alerts of three possible types:
 - a. Advisory — these alerts are purely informational, intended to alert owners, operators, and users of the bulk power system to potential problems;
 - b. Recommendation — these alerts are intended to recommend specific action be taken by owners, operators, and users of the bulk power system;
 - c. Required Action — these alerts are intended to require specific action by owners, operators, and users of the bulk power system. Such alerts require NERC board approval before issuance.

3. Members of NERC and bulk power systems owners, operators, and users shall provide NERC with detailed and timely operating experience information and data, and shall evaluate and take appropriate action on alerts issued by NERC.

809. Reliability Benchmarking

NERC shall identify and track key reliability indicators as a means of benchmarking reliability performance and measuring reliability improvements. This program will include assessing available metrics, developing guidelines for acceptable metrics, maintaining a performance metrics “dashboard” on the NERC Web site, and developing appropriate reliability performance benchmarks.

810. Information Exchange

NERC shall disseminate the results of its events analysis findings and lessons learned to the industry. Recommendations that result from this program will be reviewed as part of the readiness evaluation and improvement program and also be used to guide the reliability assessment program.

811. Equipment Performance Data

Through its Generating Availability Data System (GADS), NERC shall collect operating information about the performance of electric generating equipment; provide assistance to those researching information on power plant outages stored in its database; and support equipment reliability as well as availability analyses and other decision-making processes developed by GADS subscribers. GADS data is also used in conducting assessments of generation resource adequacy.

SECTION 900 — TRAINING AND EDUCATION

901. Scope of the Training and Education Program

Maintaining the reliability of the bulk electric system through implementation of the Reliability Standards requires informed and trained personnel. The training and education program will provide the education and training necessary for bulk power system personnel and regulators to obtain the essential knowledge necessary to understand and operate the bulk electric system.

NERC shall develop and maintain training and education programs for the purpose of establishing training requirements, developing materials, and developing training activities. The target audience of the training and education programs shall be bulk power system operating personnel including system operations personnel, operations support personnel (engineering and information technology), supervisors and managers, training personnel, and other personnel directly responsible for complying with NERC reliability standards who, through their actions or inactions, may impact the real-time, or day-ahead reliability of the bulk power system.

NERC shall also develop and provide appropriate training and education for industry participants and regulators affected by new or changed reliability standards or compliance requirements.

To accomplish those objectives:

1. NERC shall periodically conduct job task analyses for targeted bulk power system personnel to ensure that the training program content is properly aligned to the job tasks performed by those personnel.
2. NERC shall develop and maintain personnel training program curriculum requirements based on valid job-task analysis.
3. NERC shall periodically conduct performance surveys to determine the effectiveness of the training program and identify areas for further training development and improvement.
4. NERC shall develop training and education materials and activities to assist bulk power system entities implementing new or revised reliability standard requirements or other NERC-related changes.
5. NERC shall develop and provide training to people who participate in NERC and regional entity evaluations, audits, and investigations for the compliance enforcement program, organization certification program, reliability readiness evaluation program, and the continuing education program.

902. Continuing Education Program

NERC shall develop and maintain a continuing education program to foster the improvement of training and to promote quality in the training programs used by and

implemented by bulk power system entities. The program shall approve or accredit those activities and entities meeting NERC continuing education requirements.

1. NERC shall develop and implement continuing education program requirements that promote excellence in training programs and advance improved performance for bulk system personnel identified in Section 901.
2. NERC shall develop and maintain a process to approve or accredit continuing education providers and activities seeking approval or accreditation and meeting NERC-approved continuing education requirements.
3. NERC shall perform periodic audits on continuing education providers and training activities to ensure that the approved or accredited providers and training activities satisfy NERC continuing education requirements.
4. NERC shall develop and maintain an appeals process for disputed application reviews, interpretations of guidelines and standards, probation or suspension of NERC-approved provider status, or continuing education hour disputes.

SECTION 1000 — SITUATION AWARENESS AND INFRASTRUCTURE SECURITY

1001. Situation Awareness

NERC shall through the use of reliability coordinators and available tools, monitor present conditions on the bulk power system and provide leadership coordination, technical expertise, and assistance to the industry in responding to events as necessary. To accomplish these goals, NERC will:

1. Maintain real-time situation awareness of conditions on the bulk power system;
2. Notify the industry of significant bulk power system events that have occurred in one area, and which have the potential to impact reliability in other areas;
3. Maintain and strengthen high-level communication, coordination, and cooperation with governments and government agencies regarding real-time conditions; and
4. Enable the reliable operation of interconnected bulk power systems by facilitating information exchange and coordination among reliability service organizations.

1002. Reliability Support Services

NERC will provide tools and other support services for the benefit of reliability coordinators and other system operators, including the Area Control Error (ACE) and Frequency Monitoring System, NERC Hotline, Real-time Flows, System Data Exchange (SDX), Reliability Coordinator Information System (RCIS), Transmission Services Information Network (TSIN), Interchange Distribution Calculator (IDC), Interregional Security Network (ISN), and Central Repository for Security Events (CRC). To accomplish this goal, NERC will:

1. Maintain the reliability and effectiveness of all mission-critical operating reliability support systems and services;
2. Continue to support maintenance of a transmission provider curtailment report on the CRC site in response to Federal Energy Regulatory Commission Order 605;
3. Investigate and analyze the use of high-speed real-time system measurements, including phasors, in predicting the behavior and performance of the Eastern Interconnection; and
4. Facilitate real-time voice and data exchange services among reliability coordinators (e.g., Hotline, Interregional Security Network, NERCnet, System Data Exchange, etc.).

1003. Infrastructure Security Program

NERC shall coordinate electric industry activities to promote critical infrastructure protection of the bulk power system in North America by taking a leadership role in critical infrastructure protection of the electricity sector so as to reduce vulnerability and

improve mitigation and protection of the electricity sector's critical infrastructure. To accomplish these goals, NERC shall perform the following functions.

1. Electric Sector Information Sharing and Analysis Center (ESISAC)
 - 1.1 NERC shall serve as the electricity sector's Sector Coordinator and operate its Information Sharing and Analysis Center to gather information and communicate security-related threats and incidents within the sector, with United States and Canadian government agencies, and with other critical infrastructure sectors.
 - 1.2 NERC shall improve the capability of the ESISAC to analyze security threats and incident information and provide situational assessments for the electricity sector and governments.
 - 1.3 NERC shall work closely with the United States Department of Homeland Security, Department of Energy, Natural Resources Canada, and Public Safety and Emergency Preparedness Canada.
 - 1.4 NERC shall strengthen and expand these functions and working relationships with the electricity sector, other critical infrastructure industries, governments, and government agencies throughout North America to ensure the protection of the infrastructure of the bulk power system.
 - 1.5 NERC shall fill the role of the Electricity Sector Coordinating Council and coordinate with the Government Coordinating Council.
 - 1.6 NERC shall coordinate with other critical infrastructure sectors through active participation with the other Sector Coordinating Councils, the other ISACs, and the National Infrastructure Advisory Committee.
 - 1.7 NERC shall encourage and participate in coordinated critical infrastructure protection exercises, including interdependencies with other critical infrastructure sectors.
2. Security Planning
 - 2.1 NERC shall take a risk management approach to critical infrastructure protection, considering probability and severity, and recognizing that mitigation and recovery can be practical alternatives to prevention.
 - 2.2 NERC shall keep abreast of the changing threat environment through collaboration with government agencies.
 - 2.3 NERC shall develop criteria to identify critical physical and cyber assets, assess security threats, identify risk assessment methodologies, and assess effectiveness of physical and cyber protection measures.

- 2.4 NERC shall enhance and maintain the bulk power system critical spare transformer program, encourage increased participation by asset owners, and continue to assess the need to expand this program to include other critical bulk power system equipment.
- 2.5 NERC shall support implementation of the Cyber Security Standard through education and outreach.
- 2.6 NERC shall review and improve existing Security Guidelines, develop new Security Guidelines to meet the needs of the electricity sector, and consider whether any guidelines should be developed into standards.
- 2.7 NERC shall conduct education and outreach initiatives to increase awareness and respond to the needs of the electricity sector.
- 2.8 NERC shall strengthen relationships with federal, state, and provincial government agencies on critical infrastructure protection matters.
- 2.9 NERC shall maintain and improve mechanisms for the sharing of sensitive or classified information with federal, state, and provincial government agencies on critical infrastructure protection matters; work with DOE and DHS to implement the National Infrastructure Protection Plan, as applicable to the electricity sector; and coordinate this work with PSEPC.
- 2.10 NERC shall improve methods to better assess the impact of a possible physical attack on the bulk power system and means to deter, mitigate, and respond following an attack.
- 2.11 NERC shall assess the results of vulnerability assessments and enhance the security of System Control and Data Acquisition (SCADA) and process control systems by developing methods to detect an emerging cyber attack and the means to mitigate impacts on the bulk power systems.
- 2.12 NERC shall work with the National SCADA Test Bed and the Process Control Systems Forum to accelerate the development of technology that will enhance the security, safety, and reliability of process control and SCADA systems.

SECTION 1100 — ANNUAL NERC BUSINESS PLANS AND BUDGETS

1101. Scope of Business Plans and Budgets

The board shall determine the content of the budgets to be submitted to the applicable ERO governmental authorities with consultation from the members of the Members Representatives Committee, regional entities, and others in accordance with the bylaws. The board shall identify any activities outside the scope of NERC's statutory reliability functions, if any, and the appropriate funding mechanisms for those activities.

1102. NERC Funding and Cost Allocation

1. In order that NERC's costs shall be fairly allocated among interconnections and among regional entities, the NERC funding mechanism for all statutory functions shall be based on net energy for load (NEL).
2. NERC's costs shall be allocated so that all load (or, in the case of costs for an interconnection or regional entity, all load within that interconnection or regional entity) bears an equitable share of such costs based on NEL.
3. Costs shall be equitably allocated between countries or regional entities thereof for which NERC has been designated or recognized as the electric reliability authority.
4. Costs incurred to accomplish the statutory functions for one interconnection, regional entity, or group of entities will be directly assigned to that interconnection, regional entity, or group of entities provided that such costs are allocated equitably to end-users based on net energy for load.

1103. NERC Budget Development

1. The NERC annual budget process shall be initiated in March of each calendar year thereby allowing a sufficient amount of time for NERC to receive member inputs, develop the budget, and receive board and, where authorized by applicable legislation or agreement, ERO governmental authority approval of the NERC budget for the following fiscal year.
2. The NERC budget submittal to ERO governmental authorities shall include provisions for all ERO functions, all regional entity delegated functions as specified in delegation agreements and reasonable reserves and contingencies.
3. The NERC annual budget submittal to ERO governmental authorities shall include the following information: (1) budget component justification based on statutory or other authorities; (2) how the budgeted activity lends itself to the accomplishment of the statutory or other authorities; (3) methods of calculating budget estimates; (4) who prioritizes competing needs; (5) how the budget meets the objectives of affordability, sustainability, and efficiency and effectiveness of

expenditures; (6) implementation to meet international standards; (7) transparency; and (8) accountability and execution in accordance with operating plan, performance measures, and shifting priorities.

4. NERC shall develop, in consultation with the regional entities, a reasonable and consistent system of accounts, to allow a meaningful comparison of actual results at the NERC and regional entity level by the applicable ERO governmental authorities.

1104. Submittal of Regional Entity Budgets to NERC

1. Each regional entity shall submit its annual budget for carrying out its delegated authority functions as well as all other activities and funding to NERC no later than June 1 of the prior year, together with supporting materials including the regional entity's complete business plan and organization chart, explaining the proposed collection of all dues, fees, and charges and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures.
2. NERC shall review and approve each regional entity's budget for meeting the requirements of its delegated authority. Concurrent with approving the NERC budget, NERC shall review and approve, or reject, each regional entity budget for filing.
3. NERC shall also have the right to review from time to time, in reasonable intervals but no less frequently than every three years, the financial books and records of each regional entity having delegated authority in order to ensure that the documentation fairly represents in all material respects appropriate funding of delegated functions.

1105. Submittal of NERC and Regional Entity Budgets to Governmental Authorities for Approval

1. NERC shall file for approval by the applicable ERO governmental authorities at least 130 days in advance of the start of each fiscal year. The filing shall include: (1) the complete NERC and regional entity budgets including the business plans and organizational charts approved by the board, (2) NERC's annual funding requirement (including regional entity costs for delegated functions), (3) the previous year's audited financial statements, and (4) the mechanism for assessing charges to recover that annual funding requirement, together with supporting materials in sufficient detail to support the requested funding requirement.
2. NERC shall seek approval from each governmental authority requiring such approval for the funding requirements necessary to perform ERO activities within their jurisdictions.

1106. NERC and Regional Entity Billing and Collections

1. NERC shall request the regional entities to identify all load-serving entities³ within each regional entity and the NEL assigned to each load-serving entity, and the regional entities shall supply the requested information. The assignment of a funding requirement to an entity shall not be the basis for determining that the entity must be registered in the compliance registry.
2. NERC shall accumulate the NEL by load-serving entities for each ERO governmental authority and submit the proportional share of NERC funding requirements to each ERO governmental authority for approval together with supporting materials in sufficient detail to support the requested funding requirement.
3. NEL reported by balancing authorities within a region shall be used to rationalize and validate amounts allocated for collection through regional entity or regional reliability organization processes.
4. The billing and collection processes shall provide:
 - 4.1 A clear validation of billing and application of payments.
 - 4.2 A minimum of data requests to those being billed.
 - 4.3 Adequate controls to ensure integrity in the billing determinants including identification of entities responsible for funding NERC's activities.
 - 4.4 Consistent billing and collection terms.
5. NERC will bill and collect all budget requirements approved by applicable ERO governmental authorities (including the funds required to support those functions assigned to the regional entities through the delegation agreements) directly from the load-serving entities or their designees or as directed by particular ERO governmental authorities, except where the regional entity is required to collect the budget requirements for NERC, in which case the regional entity will collect directly from the load-serving entities or as otherwise provided by agreement and submit funds to NERC. Alternatively, a load-serving entity may pay its allocated ERO costs through a regional entity managed collection mechanism.
6. NERC shall set a minimum threshold limit on the billing of small LSEs to minimize the administrative burden of collection.
7. NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

³ A regional entity shall allocate funding obligations using a NERC-approved alternative method, as stated in the regional delegation agreement.

8. In the case where a Regional Entity performs the collection for ERO, the Regional Entity will not be responsible for non-payment in the event that a user, owner or operator of the Bulk Power System does not pay its share of dues, fees and charges in a timely manner, provided that such a Regional Entity shall use reasonably diligent efforts to collect dues, fees, and other charges from all entities obligated to pay them. However, any revenues not paid shall be recovered from others within the same region to avoid cross-subsidization between regions.
9. Both NERC and the regional entities also may bill members or others for functions and services not within statutory requirements or otherwise authorized by the appropriate governmental authorities. Costs and revenues associated with these functions and services shall be separately identified and not commingled with billings associated with the funding of NERC or of the regional entities for delegated activities.

1107. Penalty Applications

1. Where NERC or a regional entity initiates an investigation that leads to imposition of a penalty, the entity that initiated the investigation shall receive any penalty monies imposed and collected as a result of that investigation.
2. All funds from financial penalties assessed in the United States received by the entity initiating the investigation shall be applied as a general offset to the entity's budget requirements for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Funds from financial penalties assessed against a Canadian entity shall be applied as specified by legislation or agreement.
3. In the event that an investigation is performed jointly by NERC and a regional entity, the regional entity shall receive the penalty monies and offset the entity's budget requirements for the subsequent fiscal year.
4. Exceptions to the policy due to statutory or regulatory restrictions will be considered on a case-by-case basis.

1108. Special Assessments

On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next funding cycle, NERC shall file with the applicable ERO governmental authorities, where authorized by applicable legislation or agreement, for authorization to collect a special assessment for statutory functions. Such filing shall include supporting materials to justify the requested funding, including any departure from the approved funding formula or method.

SECTION 1200 — REGIONAL DELEGATION AGREEMENTS

1201. Pro Forma Regional Delegation Agreement

NERC shall develop and maintain a pro forma regional entity delegation agreement, which shall serve as the basis for negotiation of consistent agreements for the delegation of ERO functions to regional entities.

1202. Regional Entity Essential Requirements

NERC shall establish the essential requirements for an entity to become qualified and maintain good standing as a regional entity.

1203. Negotiation of Regional Delegation Agreements

NERC shall, for all areas of North America that have provided NERC with the appropriate authority, negotiate regional delegation agreements for the purpose of ensuring all areas of the North American bulk power systems are within a regional entity area. In the event NERC is unable to reach agreement with regional entities for all areas, NERC shall provide alternative means and resources for implementing NERC functions within those areas. No delegation agreement shall take effect until it has been approved by the appropriate ERO governmental authority.

1204. Conformance to Rules and Terms of Regional Delegation Agreements

NERC and each regional entity shall comply with all applicable ERO rules of procedure and the obligations stated in the regional delegation agreement.

1205. Sub-delegation

The regional entity shall not sub-delegate any responsibilities and authorities delegated to it by its regional delegation agreement with NERC.

1206. Nonconformance to Rules or Terms of Regional Delegation Agreement

If a regional entity is unable to comply or is not in compliance with an ERO rule of procedure or the terms of the regional delegation agreement, the regional entity shall immediately notify NERC in writing, describing the area of nonconformance and the reason for not being able to conform to the rule. NERC shall evaluate each case and inform the affected regional entity of the results of the evaluation. If NERC determines that a rule or term of the regional delegation agreement has been violated by an entity or cannot practically be implemented by an entity, NERC shall notify the applicable ERO governmental authorities and take any actions necessary to address the situation.

1207. Regional Entity Audits

Approximately every three years and more frequently if necessary for cause, NERC shall audit each regional entity to verify that the regional entity continues to comply with NERC rules of procedure and the obligations of NERC delegation agreement.

SECTION 1300 — COMMITTEES

1301. Establishing Standing Committees

The board may from time to time create standing committees. In doing so, the board shall approve the charter of each committee and assign specific authority to each committee necessary to conduct business within that charter. Each standing committee shall work within its board-approved charter and shall be accountable to the board for performance of its board-assigned responsibilities. A NERC standing committee may not delegate its assigned work to a member forum, but, in its deliberations, may request the opinions of and consider the recommendations of a member forum.

1302. Committee Membership

Each committee shall have a defined membership composition that is explained in its charter. Committee membership may be unique to each committee, and can provide for balanced decision-making by providing for representatives from each sector or, where sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area, by bringing together a wide diversity of opinions from industry experts with outstanding technical knowledge and experience in a particular subject area. Committee membership shall also provide the opportunity for an equitable number of members from the United States and Canada, based approximately on proportionate net energy for load. All committees and other subgroups (except for those organized on other than a sector basis because sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area) must ensure that no two stakeholder sectors are able to control the vote on any matter, and no single sector is able to defeat a matter. With regard to committees and subgroups pertaining to development of, interpretation of, or compliance with standards, NERC shall provide a reasonable opportunity for membership from sectors desiring to participate. Committees and subgroups organized on other than a sector basis shall be reported to the NERC board and the Member Representatives Committee, along with the reasons for constituting the committee or subgroup in the manner chosen. In such cases and subject to reasonable restrictions necessary to accomplish the mission of such committee or subgroup, NERC shall provide a reasonable opportunity for additional participation, as members or official observers, for sectors not represented on the committee or subgroup.

1303. Procedures for Appointing Committee Members

Committee members shall be nominated and selected in a manner that is open, inclusive, and fair. Unless otherwise stated in these rules or approved by the board, all committee member appointments shall be approved by the board, and committee officers shall be appointed by the Chairman of the Board.

1304. Procedures for Conduct of Committee Business

1. Notice to the public of the dates, places, and times of meetings of all committees, and all nonconfidential material provided to committee members, shall be posted

on the Corporation's Web site at approximately the same time that notice is given to committee members. Meetings of all standing committees shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided that the meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including but not limited to personnel matters, compliance enforcement matters, litigation, or commercially sensitive or critical infrastructure information of any entity.

2. NERC shall maintain a set of procedures, approved by the board, to guide the conduct of business by standing committees.

1305. Committee Subgroups

Standing committees may appoint subgroups using the same principles as in Section 1302.

SECTION 1400 — AMENDMENTS TO THE NERC RULES OF PROCEDURE

1401. Proposals for Amendment or Repeal of Rules of Procedure

In accordance with the bylaws of NERC, requests to amend or repeal the rules of procedure may be submitted by (1) any ten members of NERC, which number shall include members from at least three membership segments, (2) the Member Representatives Committee, (3) a standing committee of NERC to whose function and purpose the rule pertains, or (4) an officer of the ERO.

1402. Approval of Amendment or Repeal of Rules of Procedure

Amendment to or repeal of rules of procedure shall be approved by the board after public notice and opportunity for comment in accordance with the bylaws of NERC. In approving changes to the rules of procedure, the board shall consider the inputs of the Member Representatives Committee, other ERO committees affected by the particular changes to the rules, and other stakeholders as appropriate. After board approval, the amendment or repeal shall be submitted to the ERO governmental authorities for approval, where authorized by legislation or agreement. No amendment to or repeal of the rules of procedure shall be effective until it has been approved by the applicable ERO governmental authorities.

1403. Alternative Procedure for Violation Risk Factors

In the event the standards development process fails to produce violation risk factors for a particular standard in a timely manner, the Board of Trustees may adopt violation risk factors for that standard after notice and opportunity for comment. In adopting violation risk factors, the board shall consider the inputs of the Member Representatives Committee and affected stakeholders.

SECTION 1500 — CONFIDENTIAL INFORMATION

1501. Definitions

1. **Confidential information** means (i) confidential business and market information; (ii) critical energy infrastructure information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; or (vi) cybersecurity incident information; provided, that public information developed or acquired by an entity shall be excluded from this definition.
2. **Confidential business and market information** means any information that pertains to the interests of any entity, that was developed or acquired by that entity, and that is proprietary or competitively sensitive.
3. **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. Additional guidance is available in *NERC Security Guidelines for the Electricity Sector — Protecting Potentially Sensitive Information*.
4. **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.
5. **Cybersecurity incident information** means any information related to, describing, or which could be used to plan or cause a cybersecurity incident as defined in 18 C.F.R. § 39.1.

1502. Protection of Confidential Information

1. **Identification of Confidential Information** — An owner, operator, or user of the bulk power system and any other party (the “submitting entity”) shall mark as confidential any information that it submits to NERC or a regional entity (the “receiving entity”) that it reasonably believes contains confidential information as defined by these rules, indicating the category or categories defined in Section 1501 in which the information falls. If the information is subject to a prohibition on public disclosure in the Commission-approved rules of a regional transmission organization or independent system operator or a similar prohibition in applicable federal, state, or provincial laws, the submitting entity shall so indicate and provide supporting references and details.

2. **Confidentiality** — Except as provided herein, a receiving entity shall keep in confidence and not copy, disclose, or distribute any confidential information or any part thereof without the permission of the submitting entity, except as otherwise legally required.
3. **Information no longer Confidential** – If a submitting entity concludes that information for which it had sought confidential treatment no longer qualifies for that treatment, the submitting entity shall promptly so notify NERC or the relevant regional entity.

1503. Requests for Information

1. **Limitation** — A receiving entity shall make information available only to one with a demonstrated need for access to the information from the receiving entity.
2. **Form of Request** — A person with such a need may request access to information by using the following procedure:
 - 2.1 The request must be in writing and clearly marked “Request for Information.”
 - 2.2 The request must identify the individual or entity that will use the information, explain the requester’s need for access to the information, explain how the requester will use the information in furtherance of that need, and state whether the information is publicly available or available from another source or through another means. If the requester seeks access to information that is subject to a prohibition on public disclosure in the Commission-approved rules of a regional transmission organization or independent system operator or a similar prohibition in applicable federal, state, or provincial laws, the requester shall describe how it qualifies to receive such information.
 - 2.3 The request must stipulate that, if the requester does not seek public disclosure, the requester will maintain as confidential any information received for which a submitting party has made a claim of confidentiality in accordance with NERC’s rules. As a condition to gaining access to such information, a requester shall execute a non-disclosure agreement in a form approved by NERC’s board of trustees.
3. **Notice and Opportunity for Comment** — Prior to any decision to disclose information marked as confidential, the receiving entity shall provide written notice to the submitting entity and an opportunity for the submitting entity to either waive objection to disclosure or provide comments as to why the confidential information should not be disclosed. Failure to provide such comments or otherwise respond is not deemed waiver of the claim of confidentiality.

4. **Determination by ERO or Regional Entity** — Based on the information provided by the requester under Rule 1503.2, any comments provided by the submitting entity, and any other relevant available information, the chief executive officer or his or her designee of the receiving entity shall determine whether to disclose such information.
5. **Appeal** — A person whose request for information is denied in whole or part may appeal that determination to the President of NERC (or the President’s designee) within 30 days of the determination. Appeals filed pursuant to this Rule must be in writing, addressed to the President of NERC (or the President’s designee), and clearly marked “Appeal of Information Request Denial.”

NERC will provide written notice of such appeal to the submitting entity and an opportunity for the submitting entity to either waive objection to disclosure or provide comments as to why the confidential information should not be disclosed; provided that any such comments must be received within 30 days of the notice and any failure to provide such comments or otherwise respond is not deemed a waiver of the claim of confidentiality.

The President of NERC (or the President’s designee) will make a determination with respect to any appeal within 30 days. In unusual circumstances, this time limit may be extended by the President of NERC (or the President’s designee), who will send written notice to the requester setting forth the reasons for the extension and the date on which a determination on the appeal is expected.

6. **Disclosure of Information** — In the event the receiving entity, after following the procedures herein, determines to disclose information designated as confidential information, it shall provide the submitting entity no fewer than 21 days’ written notice prior to releasing the information in order to enable such submitting entity to (a) seek an appropriate protective order or other remedy, (b) consult with the receiving entity with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Rule. Should a receiving entity be required to disclose confidential information, or should the submitting entity waive objection to disclosure, the receiving entity shall furnish only that portion of the confidential information which the receiving entity’s counsel advises is legally required.

7. **Posting of Determinations on Requests for Disclosure of Confidential Information** — Upon making its determination on a request for disclosure of confidential information, NERC or the regional entity, as applicable, shall (i) notify the requester that the request for disclosure is granted or denied, (ii) publicly post any determination to deny the request to disclose confidential information, including in such posting an explanation of the reasons for the denial (but without in such explanation disclosing the confidential information), and (iii) publicly post any determination that information claimed by the submitting entity to be confidential information is not confidential information (but without in such

[posting disclosing any information that has been determined to be confidential information\).](#)

1504. Employees, Contractors and Agents

A receiving entity shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom confidential information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

1505. Provision of Information to FERC and Other Governmental Authorities

1. **Request** — A request from FERC for reliability information with respect to owners, operators, and users of the bulk power system within the United States is authorized by Section 215 of the Federal Power Act. Other applicable ERO governmental authorities may have similar authorizing legislation that grants a right of access to such information. Unless otherwise directed by FERC or its staff or the other ERO governmental authority requesting the information, upon receiving such a request, a receiving entity shall provide contemporaneous notice to the applicable submitting entity. In its response to such a request, a receiving entity shall preserve any mark of confidentiality and shall notify FERC or other appropriate governmental authorities that the submitting entity has marked the information as confidential.
2. **Continued Confidentiality** — Each receiving entity shall continue to treat as confidential all confidential information that it has submitted to NERC or to FERC or another appropriate ERO governmental authority, until such time as FERC or the other appropriate ERO governmental authority authorizes disclosure of such information.

1506. Permitted Disclosures

1. **Confirmed Violations** — Nothing in this Section 1500 shall prohibit the disclosure of a violation at the point when the matter is filed with an appropriate governmental authority as a notice of penalty, the “violator” admits to the violation, or the alleged violator and NERC or the regional entity reach a settlement regarding the violation.
2. **Compliance Information** — NERC and the regional entities are authorized to exchange confidential information related to evaluations, audits, and investigations in furtherance of the compliance and enforcement program, on condition they continue to maintain the confidentiality of such information.

1507. Remedies for Improper Disclosure

Any person engaged in NERC or regional entity activity under section 215 of the Federal Power Act or the equivalent laws of other appropriate governmental authorities who improperly discloses information determined to be confidential may lose access to confidential information on a temporary or permanent basis and may be subject to

adverse personnel action, including suspension or termination. Nothing in Section 1500 precludes an entity whose information was improperly disclosed from seeking a remedy in an appropriate court.