

**NORTH AMERICAN ELECTRIC** )  
**RELIABILITY CORPORATION** )

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## **ATTACHMENTS:**

**Attachment 1A:** Revised pro forma Delegation Agreement – clean version

**Attachment 1B:** Revised pro forma Delegation Agreement – redlined against current pro forma Delegation Agreement

**Attachment 2A:** Revised Delegation Agreement with Western Electricity Coordinating Council – clean version

**Attachment 2B:** Revised Delegation Agreement with Western Electricity Coordinating Council – redlined against revised pro forma Delegation Agreement

**Attachment 3A:** Revised Sections 100 – 1600 of the NERC Rules of Procedure – clean version

**Attachment 3B:** Revised Sections 100-1600 of the NERC Rules of Procedure – redlined version

**Attachment 4A:** Revised Appendix 4A to the NERC Rules of Procedure – *Audit of Regional Entity Compliance Programs* – clean version

**Attachment 4B:** Revised Appendix 4A to the NERC Rules of Procedure – *Audit of Regional Entity Compliance Programs* – redlined version

**Attachment 5A:** Revised Appendix 4B to the NERC Rules of Procedure – *Sanction Guidelines of the North American Electric Reliability Corporation* – clean version

**Attachment 5B:** Revised Appendix 4B to the NERC Rules of Procedure – *Sanction Guidelines of the North American Electric Reliability Corporation* – redlined version

**Attachment 6A:** Revised Appendix 4C to the NERC Rules of Procedure – *Compliance Monitoring and Enforcement Program* – clean version

**Attachment 6B:** Revised Appendix 4C to the NERC Rules of Procedure – *Compliance Monitoring and Enforcement Program* – redlined version

**Attachment 7:** Appendix 5A to the NERC Rules of Procedure – *Organization Registration and Certification Manual* – renumbered from “Appendix 5” with no other changes

**Attachment 8:** New Appendix 5B to the NERC Rules of Procedure – *Statement of Compliance Registry Criteria*

## **I. INTRODUCTION**

The North American Electric Reliability Corporation (“NERC”) respectfully provides notice of the following documents:

- Revised pro forma Delegation Agreement with Regional Entities (**Attachment 1** to this filing)
- Revised Delegation Agreement with the Western Electricity Coordinating Council (“WECC”), based on the revised pro forma Delegation Agreement (**Attachments 2**)<sup>1</sup>

In addition, NERC respectfully provides notice of the following revisions and additions to the NERC Rules of Procedure (“ROP”):

- Revisions to Sections 200, 400, 500, 800, 1000, 1100 and 1200 of the NERC ROP (**Attachment 11**)
- Revisions to Appendix 4A to the NERC ROP -- *Audit of Regional Entity Compliance Programs* (**Attachment 12**)
- Revisions to Appendix 4A to the NERC ROP – *Sanction Guidelines of the North American Electric Reliability Corporation* (**Attachment 13**)
- Revisions to Appendix 4C to the NERC ROP – *Compliance Monitoring and Enforcement Program* (**Attachment 14**)
- Revision to Appendix 5 to the NERC ROP – *Organization Registration and Certification Manual* – this Appendix has been renumbered as Appendix 5A, with no other changes (**Attachment 15**)
- Addition of new Appendix 5B to the NERC ROP – *Statement of Compliance Registry Criteria* – this is Version 5.0 of the *Statement of Compliance Registry Criteria* which is being added as an Appendix to the ROP, with no textual changes (**Attachment 16**)

Section III of this Notice describes the proposed revised pro forma Delegation Agreement and the proposed revised Delegation Agreements between NERC and the eight Regional

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<sup>1</sup> Revisions were made to the Delegation Agreements with the other seven Regional Entities: Florida Reliability Coordinating Council (“FRCC”), Midwest Reliability Organization (“MRO”), Northeast Power Coordinating Council (“NPCC”), ReliabilityFirst Corporation (“ReliabilityFirst”), SERC Reliability Corporation (“SERC”), Southwest Power Pool Regional Entity (“SPP RE”), and Texas Reliability Entity (“Texas RE”).

Entities, including any deviations or differences in the individual Delegation Agreements from the revised pro forma Delegation Agreement. Section III also describes the amendments to the FRCC and MRO Bylaws. Section IV of this Petition describes and explains the proposed revisions and additions to the NERC ROP and Appendices, all of which are Electric Reliability Organization (“ERO”) Rules.

NERC submitted this filing with the Federal Energy Regulatory Commission (“FERC”) on June 9, 2010, and is also submitting this filing with the other applicable governmental authorities in Canada.

## **II. NOTICES AND COMMUNICATIONS**

Notices and communications with respect to this filing may be addressed to:

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## **III. REVISED DELEGATION AGREEMENTS**

### **A. Process for Development of Revised Pro Forma Delegation Agreement**

NERC and the Regional Entities have negotiated a revised pro forma Delegation Agreement, and individual Delegation Agreements based on the new pro forma agreement, in response to the need for changes identified in the course of NERC’s and the Regional Entities’ operations since 2007, and in particular in response to issues identified in NERC’s *Three-Year ERO Assessment Report* that was conducted in 2008-2009 and filed on December 17, 2009 . The

*Three-Year ERO Assessment Report* identified a number of issues which were suitable to be addressed through revisions to the Regional Entity Delegation Agreements. Based on the aggregate basket of issues to be addressed, NERC and the Regional Entities agreed it would be appropriate to negotiate a new pro forma Delegation Agreement and to enter into new Delegation Agreements consistent with the new pro forma agreement.

NERC and the Regional Entities began working together to develop the revised pro forma Delegation Agreement in the Fall of 2009. In order to provide sufficient time for negotiations, for obtaining stakeholder input, and for filing with the applicable governmental authorities, of the revised pro forma Delegation Agreement and the individual Delegation Agreements, NERC requested Federal Energy Regulatory Commission (“FERC”) approval of an amendment to the Delegation Agreements to extend the expiration date of their initial terms by one year, from May 2010 to May 2, 2011. FERC approved this amendment on January 14, 2010.<sup>2</sup>

In connection with the NERC Member Representatives Committee (“MRC”) meeting on November 4, 2009, NERC and the Regional Entities conducted a session with stakeholders for discussion of possible changes to the Delegation Agreements. Submission of written comments was also invited. On January 29, 2010, NERC posted a draft of the revised pro forma Delegation Agreement for stakeholder comment for a comment period running through March 5, 2010 (45 days). Written comments were received from eleven entities and organizations. Additionally, a discussion concerning the proposed revisions to the Delegation Agreement was held during the February 15, 2010 MRC meeting.

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<sup>2</sup> Letter Order issued January 14, 2010, in Docket No. RR10-2-000.



Based on review and consideration of stakeholder comments on the public posting, NERC and the Regional Entities completed negotiation of the revised pro forma Delegation Agreement during March and April, 2010. The respective boards of directors or trustees of the Regional Entities approved entry into revised Delegation Agreements, based on the revised pro forma Delegation Agreement, at meetings held during April and early May.<sup>3</sup> At its May 12, 2010 meeting, the NERC Board of Trustees approved the revised pro forma Delegation Agreement and the revised Delegation Agreements with each of the Regional Entities, as required by Article X, section 1 of the NERC Bylaws.

## **B. Revised Pro Forma Delegation Agreement**

### **1. Summary of Major Changes in the Pro Forma Delegation Agreement**

This subsection identifies the provisions of the revised pro forma Delegation Agreement that NERC considers to be the most significant changes from the current pro forma Delegation Agreement. Section III.B.2 provides a detailed, section-by-section description of the differences between the current and revised pro forma Delegation Agreements. **Attachment 1A** is a clean version of the revised pro forma Delegation Agreement, while **Attachment 1B** is a redlined version of the revised pro forma Delegation Agreement against the current pro forma Delegation Agreement.

- Under the revised pro forma Delegation Agreement, all of the Regional Entities have agreed to adopt the NERC Compliance Monitoring and Enforcement Program

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<sup>3</sup> The Regional Entity boards approved entry into the revised Delegation Agreements at meetings held on the following dates: FRCC, May 5; MRO, April 26; NPCC, April 27; ReliabilityFirst, April 30; SERC, April 28; SPP RE, April 26; Texas RE, April 27; WECC, April 30. **Attachments 2** contains a letter or board resolution from the Regional Entity memorializing that its board approved the revised Delegation Agreement on the date stated above.

(“CMEP”), Appendix 4C to the NERC ROP.<sup>4</sup> (Revised pro forma Delegation Agreement, §2(a)(iii) and Exhibit D.)

- Under the revised pro forma Delegation Agreement, a Regional Entity that also performs (or whose affiliated entity performs) registered functions as a Registered Entity cannot monitor its own compliance (or that of its affiliate) with applicable Reliability Standards, but rather must enter into an agreement with NERC or another Regional Entity to monitor and enforce the first Regional Entity’s compliance with the Reliability Standards that are applicable to its registered functions. (Revised pro forma Delegation Agreement, §4(a)-(b).)
- The revised pro forma Delegation Agreement expressly recognizes the possibility of coordinated compliance monitoring and enforcement, by two or more Regional Entities, of a Registered Entity that has operations in more than one region. (Revised pro forma Delegation Agreement, §4(c).)
- The revised pro forma Delegation Agreement adopts and uses the terms “Possible Violation,” “Alleged Violation,” and “Confirmed Violation,” which are being adopted in the revised NERC CMEP, Appendix 4C to the NERC ROP, in order to establish consistency among the Regional Entities as to when potential violations of Reliability Standards must be entered into the NERC and Regional Entity tracking systems and notices must be given to Registered Entities (*see* discussion in §IV.B and §IV.E below). (*See, e.g.*, Revised pro forma Delegation Agreement §6(b)-(d).)
- The revised pro forma Delegation Agreement establishes specific criteria on which NERC will base its reviews of dispositions of compliance matters by the Regional Entities. (Revised pro forma Delegation Agreement, §6(d).)
- The revised pro forma Delegation Agreement recognizes that a Regional Entity may have stakeholders lead or participate in its board compliance committee so long as integrity and independence are assured through reasonable and appropriate recusal procedures. (Revised pro forma Delegation Agreement, §6(h).)
- The revised pro forma Delegation Agreement contains an expanded description of the delegation-related activities to be carried out by the Regional Entities, including certification of Bulk Power System entities, reliability assessment and performance analysis, event analysis and reliability improvement activities, training and education, and situation awareness and infrastructure security. (Revised pro forma Delegation Agreement, §7.)

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<sup>4</sup> The revised CMEP is discussed in §IV.E of this Petition. The agreement to adopt the uniform CMEP does not include the NERC uniform Hearing Procedures. (*See* the revised pro forma Delegation Agreement, Exhibit D, §1.0.) Only one Regional Entity has a deviation from the uniform CMEP: §5.3(vii) of the WECC CMEP does not contain a reference to a shortened hearing procedure, because the WECC hearing procedures do not include the shortened hearing procedure that is included in the NERC uniform Hearing Procedures. *See* §III.C.8 below.

- Under the revised pro forma Delegation Agreement, NERC will maintain a single consolidated Compliance Registry listing the bulk power system owners, operators, and users that are registered in the various reliability functional categories as responsible to comply with applicable Reliability Standards. NERC will register entities based on application of the criteria in the NERC *Statement of Compliance Registry Criteria* to information on owners, operators and users gathered and provided by the Regional Entities. (Revised pro forma Delegation Agreement, §7(b).)
- The revised pro forma Delegation Agreement contains a new section describing in detail the processes and procedures by which the parties intend for NERC to carry out its oversight responsibilities of the Regional Entities' performance of their delegated functions. (Revised pro forma Delegation Agreement, §8.)
- Under the revised pro forma Delegation Agreement, NERC and the Regional Entities will develop performance goals, measures and other parameters to assess their performance in carrying out their respective functions and other activities. The performance goals, measures, and other parameters will be public and will be reviewed and analyzed on the same timetable as the development of the annual NERC and Regional Entity business plans and budgets. Additionally, at the request of the NERC President, a Regional Entity may be required to develop an action plan to address areas of its performance that NERC reasonably determines, based on evaluation of performance against the performance goals, measures, and parameters, to be unsatisfactory. (Revised pro forma Delegation Agreement, §8(a).)
- The revised pro forma Delegation Agreement includes a specific collaborative process for establishing "directives" with respect to the Regional Entities' performance of their delegated functions and delegation-related activities. This process begins with collaboration, proceeds through notice and comment among the parties, and concludes with a binding decision by the NERC President, with the opportunity for the Regional Entity(ies) to ask the NERC Board to review the NERC President's determination. (Revised pro forma Delegation Agreement, §8(c))
- The revised pro forma Delegation Agreement expressly identifies the requirements that will provide the basis for any audits performed by NERC of the Regional Entity's performance. (Revised pro forma Delegation Agreement, §8(f).)
- The revised pro forma Delegation Agreement specifies more detailed procedures for the preparation of the annual Regional Entity business plans and budgets. (Revised pro forma Delegation Agreement, §9 and Exhibit E.)
- The revised pro forma Delegation Agreement provides for the possibility of using penalties collected by a Regional Entity for violations of Reliability Standards in a manner other than as an offset to the Regional Entity's overall statutory budget in the following year. Any such departure from the normal treatment would require prior approval by NERC and FERC. (Revised pro forma Delegation Agreement, §9(j) and Exhibit E, §5.)

- The initial term of the revised Delegation Agreements is five years rather than three years. This is consistent with the current pro forma Delegation Agreement, which provided for an initial term of three years from May 2007 to May 2010 and a renewal term of five years. (Revised pro forma Delegation Agreement, §12(b).)

## **2. Detailed Description of Changes in the Revised Pro Forma Delegation Agreement**

This subsection provides a detailed description, on a section-by-section basis, of the changes from the current pro forma Delegation Agreement to the revised pro forma Delegation Agreement, as shown in legislative style (redlined) in **Attachment 1B**. In addition to the substantive changes described below, the revised pro forma Delegation Agreement reflects a more consistent use of defined terms and more consistent capitalization of defined terms.

### **a. Base Delegation Agreement**

**Initial paragraph and recitals.** The initial paragraph identifies the effective date of the revised Delegation Agreement as January 1, 2011, consistent with NERC's request in this Petition. In the initial paragraph and the recitals, a number of defined terms have been capitalized. The last recital describes the basis and purpose on which NERC and the Regional Entities have negotiated and entered into the revised Delegation Agreements.

**Section 1, Definitions.** The Definitions section has been revised to provide that certain defined terms (as identified by capitalization) from the NERC Glossary of Terms Used in Reliability Standards as well as from the U.S. Federal Power Act, FERC's ERO Regulations, and the NERC ROP, are used in the pro forma Delegation Agreement. The Definitions section has also been revised to state that terms may be defined elsewhere in the Delegation Agreement. "Regional Entity" and "Reliability Standard" have been removed from the Definitions section because they are defined elsewhere.

**Section 2, Representations.** Section 2(a)(iii) has been revised to state that the Regional Entity has adopted the NERC CMEP, Appendix 4C to the NERC ROP. Revisions have been made to §2(b) for grammatical purposes.

**Section 3, Covenants.** Revisions have been made to correctly use defined terms and to provide correct cross-references within the revised pro forma Delegation Agreement.

**Section 4, Delegation of Authority.** Revisions have been made to §4(a) for consistent use of terms and to recognize that certain limitations on the geographic scope of the Regional Entity's Delegated Authority may be set forth in Exhibit A to the Delegation Agreement. In addition, §4(a) has been revised, and new §4(b) has been added, to specify that a Regional Entity that also performs (or whose affiliated entity performs) registered functions as a Registered Entity cannot monitor its own compliance (or that of its affiliate) with applicable Reliability Standards, but rather must enter into an agreement with NERC or another Regional Entity to monitor and enforce the first Regional Entity's compliance with the Reliability Standards that are applicable to its registered functions.

New §4(c) has been added to allow Regional Entities to enter into arrangements, subject to approval by NERC, to perform compliance monitoring and enforcement activities outside their regions, with respect to Registered Entities that have registered functions monitored by more than one Regional Entity.

Sections §4(b) and (c) of the current pro forma Delegation Agreement are §4(d) and (e) of the revised pro forma Delegation Agreement. Revisions have been made to these subsections to use defined terms and to provide correct cross-references.

**Section 5, Development and Proposal of Reliability Standards.** In §5(a)(ii), a reference to a section of the NERC ROP has been changed to be consistent with the revised ROP. Other revisions have been made to §5 to use defined terms and for greater clarity.

**Section 6, Enforcement of Compliance with Reliability Standards.** Revisions have been made throughout §6 to use defined terms, including the terms Possible Violation, Alleged Violation and Confirmed Violation, and other defined terms that are used in the revised uniform CMEP.

Section 6(a) has been revised to provide for consistent use of defined terms and other terms. Section 6(a) has also been revised (i) to note that limitations or exceptions to the geographic scope of the Regional Entity's delegated authority to enforce Reliability Standards may be specified in Exhibit A; (ii) to specify that any changes to the Regional Entity's CMEP require approval of FERC; and (iii) to specify that in implementing its CMEP, the Regional Entity agrees to comply with any directives issued pursuant to new §8(c) and with any guidance or directions issued by the NERC Board or a Board committee pursuant to new §8(d).

Sections 6(b)-(d) and (f) have been revised to use defined terms

Section 6(c) has been revised to specify that a Possible Violation, Alleged Violation or Confirmed Violation shall be treated as non-public unless the matter is filed with FERC as a Notice of Penalty or, if disclosure is required, is dismissed.

New §6(d) provides that the Regional Entity shall report all Possible Violations, Alleged Violations and Confirmed Violations to NERC for review and, in the case of Confirmed Violations, penalties or sanctions, and settlements, for approval. This provision clarifies what compliance enforcement actions by the Regional Entity are subject to approval by NERC. Section 6(d) also states that following NERC's approval of a Regional Entity's disposition of a

compliance enforcement matter, NERC shall file the disposition with FERC if required. Further, §6(d) states the criteria by which NERC will review the Regional Entity's dispositions. Those criteria are:

- (i) whether the disposition is supported by a sufficient record compiled in accordance with the NERC ROP, NERC directives and FERC requirements, taking into account the nature of the Possible Violation, Alleged Violation or Confirmed Violation;
- (ii) whether the disposition is consistent with any applicable directives issued pursuant to new §8(c), any applicable directions or guidance issued pursuant to new §8(d), or other applicable NERC guidance concerning the subject Reliability Standards;
- (iii) if the disposition is a Confirmed Violation or settlement, whether it provides for a penalty or sanction (including no penalty or sanction) in accordance with the NERC *Sanction Guidelines*; and
- (iv) whether the disposition is reasonably consistent with other dispositions by the Regional Entity and by other Regional Entities of Possible Violations, Alleged Violations and Confirmed Violations involving the same or similar facts and circumstances.

The specification of these criteria in the revised pro forma Delegation Agreement is intended to bring greater clarity and certainty to the scope and bases of NERC's review of Regional Entity dispositions of compliance enforcement matters. Section 6(d) provides that NERC may reject any Regional Entity disposition of a compliance enforcement matter, with an explanation of why NERC believes the disposition does not meet the above criteria.

Section 6(d) also provides that the Regional Entity may submit a disposition requiring NERC approval that has previously been rejected by NERC, or a revised disposition following a rejection, directly to the NERC Board of Trustees Compliance Committee ("BOTCC") for approval, without revising the disposition to address all the grounds on which NERC originally rejected the disposition. This provision provides a means for the Regional Entity to submit a disposition to the BOTCC for approval or rejection if the Regional Entity disagrees with the

reasons NERC staff rejected the disposition and/or believes submission of further revised versions of the disposition to NERC staff will not be useful.

Finally, §6(d) states that final approval of the Regional Entity's disposition of a Possible Violation, Alleged Violation or Confirmed Violation shall be made by the NERC BOTCC; however, the BOTCC may, by appropriate resolution, delegate authority for final approval of dispositions of specified categories of Possible Violations, Alleged Violations and Confirmed Violations to the NERC President. This delegation authority provides the BOTCC with the ability to reduce its workload by avoiding the need to review dispositions of certain categories of compliance enforcement matters, and thereby enable the BOTCC to devote more attention to dispositions of more serious or complicated compliance enforcement matters.

Section 6(e) has been revised to clarify that it is decisions of the Regional Entity Hearing Body with respect to penalty determinations that may be filed with, and heard and disposed of by, NERC, in accordance with procedures in the NERC ROP.

Section 6(g) has been revised (from §6(f) in the current pro forma Delegation Agreement) to specify that the Regional Entity's CMEP shall be maintained in compliance with the NERC CMEP and the annual NERC CMEP Implementation Plan.

Section 6(h) has been revised (from §6(g) in the current pro forma Delegation Agreement) to specify that the Regional Entity shall maintain a conflict of interest policy that assures the integrity and independence of its CMEP, including the integrity and independence of persons or decision-making bodies making final determinations in compliance enforcement actions under §5.0 of the NERC CMEP.

Section 6(i) has been revised (from §6(h) in the current pro forma Delegation Agreement) to provide that NERC will review the Regional Entity's CMEP at least once every five years



rather than at least once every three years. However, this subsection continues to provide that NERC may review the Regional Entity's CMEP as often as NERC deems necessary.

Sections 6(i) and 6(j) in the current pro forma Delegation Agreement have been deleted. Portions of these subsections are encompassed by §6(a), §8(a) and §8(c) – (e) of the revised pro forma Delegation Agreement, and the remaining provisions were viewed to be no longer necessary, particularly in light of the agreement that all Regional Entities will adopt the NERC uniform CMEP.

**Section 7, Delegation-Related Activities.** Section 7 has been significantly expanded to identify the delegation-related activities the Regional Entity will perform, in addition to its delegated authority to develop and adopt Regional Reliability Standards and (for Regional Entities organized on an Interconnection-wide basis) Regional Variances under §5 and to monitor and enforce compliance with Reliability Standards under §6. The initial paragraph of §7 states that the Regional Entity's delegation-related activities include, but are not limited to, those described in subsections 7(a) through 7(f), each of which shall be considered a statutory activity.

Section 7(a) provides that the NERC Board shall set criteria for certification of Bulk-Power System entities, in accordance with the NERC ROP, and that the Regional Entity shall issue certifications to entities in accordance with the NERC ROP.

Section 7(b) provides for NERC to develop criteria for registration of owners, operators, and users of the Bulk-Power System as Registered Entities, and states that NERC shall apply the registration criteria to register owners, operators, and users as Registered Entities.<sup>5</sup> It also provides that NERC shall maintain the registration database (*i.e.*, the Compliance Registry). Currently, the Regional Entities have the initial responsibility to register owners, operators, and

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<sup>5</sup> As part of this filing, NERC is proposing to add the *Statement of Compliance Registry Criteria* to the ROP as Appendix 5B. See §IV.G below and **Attachment 16**.

users, and to maintain Regional compliance registries. However, revised §7(b) does provide that the Regional Entity shall provide data and information to NERC to enable NERC to maintain a registration database that is accurate and up-to-date. Finally, §7(b) provides that the NERC BOTCC shall hear appeals from owners, operators, and users contesting registration, in accordance with the NERC ROP; and that if the BOTCC upholds a registration decision, NERC shall defend the decision in any subsequent appeal of the decision by the Registered Entity to FERC.

Section 7(c) addresses the Regional Entity's responsibilities with respect to the Reliability Assessment and Performance Analysis Program. The responsibilities described in this subsection are consistent with those currently performed by the Regional Entities in this program, but new §7(c) memorializes them in the Delegation Agreement. Section 7(c) also specifies that NERC shall develop data-gathering quality control procedures, forms and reporting mechanisms which shall be used by the Regional Entity in carrying out its responsibilities.

Section 7(d) addresses the Regional Entity's responsibilities with respect to Event Analysis and Reliability Improvement. Section 7(d) specifies that the Regional Entity will conduct event analysis pursuant to the NERC ROP and applicable governmental regulations; that NERC and the Regional Entity will coordinate event analysis to support the effective and efficient use of their collective resources, consistency in event analysis, and timely delivery of event analysis reports; and that in collaboration with NERC, the Regional Entity will disseminate to the industry lessons learned and other information from event analysis.

Section 7(e) addresses the Regional Entity's responsibilities with respect to the Training and Education Program, and specifies that the Regional Entity may provide training and education to Registered Entities, as it deems necessary, in support of its performance of

delegated functions and related activities. NERC may also provide training and education programs to Registered Entities on topics relating to NERC's responsibilities as the ERO.

Finally, Section 7(f) addresses the Regional Entity's responsibilities with respect to the Situation Awareness and Infrastructure Security Program (which includes Critical Infrastructure Protection). It specifies that the Regional Entity will gather and assess situation awareness information provided by Registered Entities pursuant to the NERC ROP and applicable governmental regulations, and will provide other data, information and assistance to NERC in support of NERC's activities in monitoring present conditions and responding to events on the Bulk-Power System. In addition, the Regional Entity will collaborate with NERC in its efforts to coordinate electric industry activities to promote critical infrastructure protection of the Bulk-Power System.

#### **Section 8, Oversight of Performance of Delegated Functions and Related Activities.**

Section 8 is a new section that sets forth processes and procedures NERC and the Regional Entities intend to be used in NERC's oversight of the Regional Entities' performance of Delegated Authority and related activities under the Delegation Agreements. The introductory paragraph of §8 states that it is the intent of NERC and the Regional Entities that matters relating to NERC's oversight of a Regional Entity's performance of its Delegated Authority and related activities shall be established, to the maximum extent possible, by collaboration between NERC and the Regional Entity and, if applicable, other Regional Entities.

Section 8(a) provides that NERC shall develop, in collaboration with the Regional Entities, performance goals, measures and other parameters, and performance reports, which shall be used to measure NERC's and the Regional Entity's performance of their respective functions and related activities. These performance goals, measures and parameters and the form

of performance reports will be approved by the NERC President and made public. Section 8(a) further provides that NERC will use the performance goals, measures and parameters and performance reports to evaluate the Regional Entity's performance of its delegated functions and related activities and to provide advice and direction to the Regional Entity on performance improvements. Additionally, the performance goals, measures and other parameters and their values will be reviewed by NERC and the Regional Entities, and revised if appropriate, and made public, on the same timeline as the annual business planning and budgeting process.

Section 8(a)(iii) specifies that at the request of the NERC President, a Regional Entity will be required to develop, submit for NERC approval, and implement, action plans to address areas of its performance that are reasonably determined by NERC, based on analysis of the Regional Entity's performance against the performance goals, measures and parameters, or its performance of specific activities, to be unsatisfactory. Before requiring the Regional Entity to adopt and implement an action plan or other remedial action, NERC must notify the Regional Entity of the need and basis for an action plan or other remedial action and provide an opportunity for the Regional Entity to submit a response contesting NERC's evaluation of its performance and the need for an action plan. Additionally, the Regional Entity may ask the NERC President to reconsider the request, and thereafter may ask the NERC Board to review and reconsider the request. Section 8(a)(iii) further specifies that NERC and the Regional Entity will work collaboratively in the development and implementation of the action plan. A final action plan submitted by the Regional Entity will be made public unless the NERC President determines the action plan or specific portions of it should be non-public.

Section 8(b) provides that NERC will make available to the Regional Entity standardized training and education programs for Regional Entity personnel, which will be designed taking

into account input from the Regional Entities on topics relating to the delegated functions and related activities.

Section 8(c) sets forth the process by which NERC may issue directives to a Regional Entity concerning the manner in which the Regional Entity shall perform its delegated functions and related activities under the Delegation Agreement. (An ERO Rule requiring FERC approval is not a §8(c) directive.) NERC will initiate the development of a directive through a collaborative process with the Regional Entity and, if applicable, other Regional Entities. Any directive developed through this collaborative process will be approved and issued by the NERC President. If, after a reasonable time, NERC and the Regional Entity(ies) cannot reach agreement on the directive, NERC may issue the directive with the approval of the NERC President. However, before the directive is issued, the Regional Entity(ies) must be given an opportunity to present their positions on the proposed directive, and a suggested alternative version(s), to the NERC President. A directive issued by the NERC President will be binding upon and complied with by the Regional Entity, subject to reasonable time periods for adoption, implementation, and funding of any necessary resources. The Regional Entity may ask the NERC Board (or a Board committee to which the Board delegates authority) to review and confirm, revise or revoke any directive issued without the Regional Entity's agreement; such a request must be made within 30 days after issuance of the directive absent good cause for a later request.

Section 8(c)(iv) states that NERC and Regional Entities will collaborate in deciding whether a directive will be made public; if no agreement is reached by the date of issuance of the directive, the NERC President will determine if it should be made public. Section 8(c)(iv) states

a presumption that a directive should be made public unless the NERC President makes a written determination, stating a specific reason, that the directive should be non-public.

Section 8(d) provides that the NERC Board, or a Board committee with delegated authority, may issue guidance and directions to the Regional Entity(ies) as to the manner in which delegated functions and related activities shall be performed. The Board or Board committee shall also establish reasonable time periods for implementation of guidance or directions, taking into account the impact on the reliability of the Bulk-Power System and the need for funding of any additional resources. The Regional Entity(ies) may request the NERC Board or Board committee to reconsider or revise any guidance or direction. Any guidance or direction must be stated in writing and will be public, unless the Board or Board committee determines particular guidance or direction should be non-public.

Section 8(e) states that NERC will conduct collaborative reviews with the Regional Entity(ies) that provide for the exchange of information on practices, experiences, and lessons learned in the implementation of the delegated functions. Essentially the same provision is found in §6(j) of the current pro forma Delegation Agreement.

Section 8(f) specifies that any audits NERC performs of the Regional Entity shall be limited to examination of the Regional Entity's compliance with the Delegation Agreement, the NERC ROP, the CMEP, FERC requirements, and directives issued pursuant to §8(c).

**Section 9, Funding.** This section has been expanded from the Funding section (§8) of the current pro forma Delegation Agreement. Exhibit E to the Delegation Agreement (discussed in §III.B.2.f below) contains other provisions concerning funding and costs. The introductory paragraph to §9 states the overall objective of the Funding section, which is to ensure, subject to

FERC approval, that the delegated functions and related activities in sections 5, 6 and 7 of the Delegation Agreement will have reasonable and adequate funding and resources.

Section 9(a) specifies that the Regional Entity will develop, through a collaborative process with NERC, and propose, an annual business plan and budget, in accordance with the ERO Regulations, FERC orders and NERC business planning and budgeting policies and instructions. The proposed business plan and budget must describe the activities necessary, and provide a budget with adequate resources, for the Regional Entity to carry out its Delegated Authority; and must show the funding sources and amounts to fund the proposed budget, including as applicable assessments to end users, penalty monies, and other sources of funds.

Section 9(b) specifies that NERC and the Regional Entity agree that the portion of the Regional Entity's approved budget for statutory functions and activities will be equitably allocated among end users within the Regional Entity's geographic boundaries and recovered through a formula based on Net Energy for Load ("NEL") or an alternative formula that is proposed by the Regional Entity and approved by NERC and FERC. Section 9(b) is not substantively different from §8(b) of the current pro forma Delegation Agreement.

Section 9(c) specifies that NERC will determine that the assessments to fund the costs for its statutory functions in its budget are first allocated fairly among the Interconnections and regions according to the applicability of the work to those Interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate, with allocation on a NEL basis presumed to be equitable. Section 9(c) is not substantively different from §8(c) of the current pro forma Delegation Agreement.

Section 9(d) specifies that NERC will provide the Regional Entity with the forms for submittal of its business plan and budget, and any accompanying instructions, in accordance with

a schedule for preparation of the business plan and budget developed by NERC and the Regional Entities. Section 9(e) specifies that the Regional Entity will submit its proposed annual business plan and budget for its Delegated Authority and related activities, and for all the Regional Entity's other activities, in accordance with the annual schedule for preparation of business plans and budgets that NERC and the Regional Entities will develop pursuant to Exhibit E.

Section 9(f) provides that NERC will fund the Regional Entity's performance of its Delegated Authority and related activities in accordance with the Regional Entity's business plan and budget, in the amount of the assessments to end users approved by FERC. Section 9(f) refers to Exhibit E as setting forth the procedures and timing for billing and collecting the approved assessments from end users and other entities and payment of the approved assessment to the Regional Entity. Section 9(f) also states that NERC will not impose any material obligation or requirement regarding the Delegated Authority on the Regional Entity that has not been provided for in an approved business plan and budget, or an approved amended or supplemental and budget, without the Regional Entity's consent.

Section 9(g) contains provisions found in §8(e) of the current pro forma Delegation Agreement stating that NERC will develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to FERC's Uniform System of Accounts and sufficient to allow FERC to compare each NERC and Regional Entity fiscal year budget with the actual results at the NERC and Regional Entity levels; that the Regional Entity will follow NERC's prescribed system of accounts except to the extent NERC permits a departure; and that NERC will make an informational filing with FERC describing any waiver it permits and providing an explanation supporting the permitted departure. Other provisions of §8(e) of the current Delegation



Agreement have been deleted from this subsection as they are covered elsewhere in the revised pro forma Delegation Agreement.

The provisions found in §8(f) and §8(g) of the current pro forma Delegation Agreement have been deleted. The provisions in current §8(f) are found in §2(a) of Exhibit E of the revised pro forma Delegation Agreement, and the provisions of current §8(g) are covered in greater detail elsewhere in §9 and Exhibit E of the revised pro forma Delegation Agreement.

Section 9(h) is identical to §8(h) of the current pro forma Delegation Agreement and specifies that the Regional Entity will 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). Section 9(i) is comparable to §8(i) of the current pro forma Delegation Agreement but has been revised to specify that the Regional Entity will submit its audited financial statements for the fiscal year to NERC by May 1 of the following year (rather than within 150 days following the end of the fiscal year).<sup>6</sup>

The provision of §8(j) of the current pro forma Delegation Agreement, that NERC will have the right to review the Regional Entity's financial records no less than every three years, is not included in §9 of the revised pro forma Delegation Agreement, because NERC's review of the Regional Entity's financial records is now covered in §8 of Exhibit E to the revised pro forma Delegation Agreement.

Section 9(j) is comparable to §8(k) of the current pro forma Delegation Agreement and specifies that Exhibit E sets forth the mechanism through which the Regional Entity will offset penalty monies it receives (other than penalty monies received from an operational function or

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<sup>6</sup> This change is consistent with the revised procedure for the submission of NERC's and the Regional Entities' annual comparisons of their budgeted funding and expenditures to actual budgets and expenditures for the preceding year.

division or affiliated entity of the Regional Entity) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which the Regional Entity will transmit to NERC any penalty monies received from an operational function or division or affiliated entity of the Regional Entity. However, the subsection has been amended to add a proviso that, subject to approval by NERC and FERC, the Regional Entity may propose and implement an alternative use of penalty monies to that specified in Exhibit E.

**Section 10, Assignment.** The only revision to this provision (which is §9 of the current pro forma Delegation Agreement) is the addition of a proviso that the Regional Entity may not delegate its Delegated Authority to any other entity "without NERC's express consent."

**Section 11, Default and Cure.** Other than modification of internal and cross-references, the only revision to this provision (which is §10 of the current pro forma Delegation Agreement) is the following revision to one sentence: "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 18 of this Agreement to resolve a dispute as to whether a Breach has occurred or been cured."

**Section 12, Term and Termination.** This section covers the same subject matter as §11 of the current pro forma Delegation Agreement. Sections 12(a) and (b) have been revised (i) to specify an Effective Date of January 1, 2011; (ii) to specify a term of five years from the Effective Date, with the possibility of renewal for successive additional five-year renewal terms (the current Delegation Agreements only provide for a single five-year renewal term), and (iii) to update/revise cross-references to other sections of the revised pro forma Delegation Agreement. Establishing an (initial) term of five years from the proposed Effective Date of January 1, 2011 is consistent with the current Delegation Agreements which provided for a three-year initial term

beginning in May 2007 with provision for a five-year renewal term. Prior to any renewal term, NERC must conduct an audit to ensure that the Regional Entity continues to meet all statutory and regulatory requirements necessary to maintain its eligibility for delegation.

Section 12(b) has been revised to provide that either Party may terminate the Delegation Agreement as of the end of a term by giving written notice at least one year prior to the end of the term. Section 12(b) has also been revised to state that if the Delegation Agreement is not renewed or becomes subject to termination, NERC and the Regional Entity shall work both to provide for a transition of Regional Entity's Delegated Authority to NERC or another entity and to provide for resolution of any wind-up costs associated with termination of the Delegation Agreement.

There are no revisions in §12(c) and (d) other than updating cross-references.

**Section 13, Limitation of Liability.** This section is identical to §12 of the current pro forma Delegation Agreement; no revisions have been made.

**Section 14, No Third Party Beneficiaries.** This section is identical to §13 of the current pro forma Delegation Agreement; only a typographical revision has been made.

**Section 15, Confidentiality.** This section is identical to §14 of the current pro forma Delegation Agreement; no revisions have been made.

**Section 16, Amendment.** This section is identical to §15 of the current pro forma Delegation Agreement; no revisions have been made.

**Section 17, Amendments to the NERC Rules of Procedure.** This section covers the same subject matter as §16 of the current pro forma Delegation Agreement; the only revisions that have been made are to update cross-references and to use defined terms.

**Section 18, Dispute Resolution.** This section covers the same subject matter as §17 of the current pro forma Delegation Agreement; however, in the revised pro forma Delegation Agreement, the Dispute Resolution procedure has been expanded to provide for a more detailed procedure with multiple steps. The expanded procedure includes: (i) a requirement for the Party invoking Dispute Resolution to do so by written notice to the other Party; (ii) a specified period (which may be extended by agreement) in which the Parties' designated representatives will negotiate to attempt to resolve the dispute; (iii) if the dispute is not resolved, escalation to the Parties' CEOs, who shall negotiate for a specified period (which may be extended by agreement) to attempt to resolve the dispute; and (iv) if the CEOs are unable to resolve the dispute, either Party may invoke any other available dispute resolution mechanism, including filing a complaint or petition with FERC. The expanded Dispute Resolution process is more consistent with the type of process often found in commercial agreements.

Section 18(f) states that if the Parties are unable to resolve a dispute through negotiations, (i) it is the intent of the Parties that unresolved disputes shall be presented to and resolved by the FERC if FERC has and accepts jurisdiction over the subject matter of the dispute, (ii) the Parties may, by mutual agreement, attempt to resolve the dispute through arbitration, mediation, or other process involving resort to an impartial neutral, and (iii) resolution of disputes through FERC proceedings, arbitration, mediation, or other use of an impartial neutral, is preferred over judicial proceedings.

The introductory paragraph of §18 states that during Dispute Resolution, the Regional Entity shall not suspend performance of any delegated function, and the Parties shall continue to make reasonable, good faith efforts to comply with their obligations under the Delegation

Agreement. Finally, §18(g) provides that the Dispute Resolution process shall not apply to compliance enforcement actions against individual Registered Entities.

**Section 19, Notice.** This section is identical to §18 of the current pro forma Delegation Agreement, with the exception that the recipient of notices for NERC has been changed.

**Section 20, Governing Law.** This section is identical to §19 of the current pro forma Delegation Agreement; no revisions have been made.

**Section 21, Headings.** This section is identical to §20 of the current pro forma Delegation Agreement; no revisions have been made.

**Section 22, Savings Clause.** This section covers the same subject matter as §21 of the current pro forma Delegation Agreement. The only revisions from the current provision are for the use of defined terms, and to change the term “ensure reliability” to “maintain reliability.”

**Section 23, Entire Agreement.** This section is identical to §22 of the current pro forma Delegation Agreement; no revisions have been made.

**Section 24, Execution of Counterparts.** This section is identical to §23 of the current pro forma Delegation Agreement; no revisions have been made.

**b. Exhibit A to Delegation Agreement**

Exhibit A to the Delegation Agreements sets forth the Regional Entity’s geographic boundaries and any additions to or exclusions from the geographic or electrical boundaries within which the Regional Entity will carry out its delegated functions. The following instruction has been added to Exhibit A in the revised pro forma Delegation Agreement:

Any exclusions of geographic or electrical areas or of Registered Entities from the scope of the Registered Entity’s Delegated Authority within the geographical or electrical boundaries shown on **Exhibit A**, and any additions of geographic or electrical areas or of Registered Entities located outside the boundaries shown on **Exhibit A** to the scope of the Regional Entity’s Delegated Authority, shall be specifically stated or described in **Exhibit A**. (Emphasis in original.)

**c. Exhibit B to Delegation Agreement**

In the revised pro forma Delegation Agreement, there are no changes to the five criteria stated in the cover page to Exhibit B. Exhibit B to the individual Delegation Agreements includes each Regional Entity's current bylaws.

**d. Exhibit C to Delegation Agreement**

In the revised pro forma Delegation Agreement, there is only one change to the 34 Common Attributes of an acceptable Regional Entity Reliability Standards Development Procedure ("RSDP") which the Regional Entity's RSDP must meet. Specifically, in Common Attribute 34, the reference to "Violation Severity Levels" has been deleted. This is consistent with a recent change to the NERC RSDP, approved by FERC, pursuant to which Violation Severity Levels and Violation Risk Factors for a Reliability Standard are no longer considered as a part of the standard and developed through the RSDP, but rather are considered compliance elements that are developed separately in conjunction with development of the standard and approved by the NERC Board.<sup>7</sup> Exhibit C to the individual Delegation Agreements includes each Regional Entity's current RSDP.

**e. Exhibit D to the Delegation Agreement**

Section 1.0 of Exhibit D has been revised to state that the Regional Entity will implement the NERC CMEP, Appendix 4C to the NERC ROP. All Regional Entities have agreed to implement the NERC CMEP.<sup>8</sup> Therefore, former §1.2 of Exhibit D, which provided for identification of any deviations between the Regional Entity's CMEP and the NERC uniform

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<sup>7</sup> This amendment to the NERC RSDP was approved by FERC in a letter order issued February 5, 2010, in Docket No. 10-4-000.

<sup>8</sup> As noted above and described in §III.C.8 below, there is one deviation in the WECC CMEP from the uniform CMEP.

CMEP, has been deleted. However, revised §1.0 also specifies that for purposes of this commitment, the NERC CMEP does not include the NERC uniform Hearing Procedures. The Regional Entity's Hearing Procedures are addressed in §2.0, Regional Hearing of Compliance Matters. As in the current pro forma Delegation Agreement, §2.0 requires identification of the Regional Entity's hearing body and, if the hearing body is a compliance panel other than the Regional Entity Board, a description of how the members of the compliance panel are selected and the qualifications for selection to the compliance panel. Section 2.0 also specifies that the Regional Entity will conduct compliance hearings in accordance with Attachment 2, Hearing Procedures, to the NERC CMEP, subject to any deviations in the Regional Entity's hearing procedures that are listed in §2.0 or in a separate attachment.

Section 3.0 of Exhibit D in the revised pro forma Delegation Agreement has not been revised from the current pro forma Delegation Agreement. It requires the Regional Entity to identify any other decision-making bodies used within its compliance program, along with a description of the functions of that body, to the extent not described elsewhere, how the members of that body are selected, and the qualifications for selection.

**f. Exhibit E to the Delegation Agreement**

Exhibit E, Funding, has been considerably expanded in the revised pro forma Delegation Agreement, and some provisions have been moved to Exhibit E from the body of the Delegation Agreement.

In Section 1, the list of Regional Entity activities funded through the ERO funding mechanism has been expanded. Event Analysis and Reliability Improvement has been listed as a separate statutory activity, and Situation Awareness and Infrastructure Security have been listed as two separate statutory activities rather than as a single activity. Reliability Readiness

Evaluation and Improvement has been deleted from the list, as this program has been terminated. In addition, the references to the sections of the NERC ROP have been deleted as these were no longer considered useful for budgeting and funding purposes.

Section 2 contains detailed provisions concerning the development, submission, review and preparation of the Regional Entity's annual business plan and budget. Section 2(a) specifies that the Regional Entity's business plan and budget shall include supporting materials, including the proposed collection of all assessments, dues, fees, and charges, and the proposed expenditure of the funds to be collected in sufficient detail to justify the requested budgeted expenditures and assessments. The proposed business plan and budget and proposed assessment shall also provide for reasonable reserve mechanisms for unforeseen and extraordinary expenses and other contingencies.

Section 3 addresses the allocation of the Regional Entity's costs, and specifies that the assessments to fund the Regional Entity's delegated functions and related activities shall be allocated among all load-serving entities ("LSE") on the basis of NEL, unless a different method of allocating and collecting assessments has been submitted to and approved by NERC and FERC. The Regional Entity must submit to NERC a list of the LSEs or designees that shall be responsible for paying the Regional Entity's assessment, the LSEs' proportionate NEL, and other data and information needed to calculate the Regional Entity's assessments to LSEs and designees.

Section 4 addresses collection and funding. Section 4(a) (similar to §3 of Exhibit E to the current pro forma Delegation Agreement) contains alternative provisions applicable if (i) NERC bills and collects the assessments directly from the LSEs and designees, or (ii) the Regional Entity acts as billing and collection agent on behalf of NERC. The text applicable where the



Regional Entity acts as the billing and collection agent retains provisions regarding the Regional Entity's role that FERC has previously required.

Section 4(b) specifies that NERC will pursue any non-payments of assessment amounts, and that to the extent reasonably practicable, the Regional Entity will assist NERC in pursuing and collecting any non-payments. Section 4(b) further specifies that the Regional Entity is not responsible and does not assume any liability for recovering non-payments or underpayments of assessment amounts; rather, NERC retains sole responsibility for recovering non-payments or underpayments of assessment amounts. Additionally, NERC will add the amount of any non-payments by end-users or designees within the Regional Entity's region that are reasonably determined to be uncollectible, to NERC's assessments for a subsequent year, with the amount of such non-payments to be allocated to end-users within Regional Entity's region. This provision memorializes the procedures that NERC and the Regional Entities have heretofore followed to recover unpaid assessments.

Section 4(c) is comparable to §3(c) of the current pro forma Delegation Agreement, and specifies that NERC will pay the Regional Entity's approved assessment to fund the cost of the Regional Entity's delegated functions and related activities to the Regional Entity in four equal quarterly payments. The subsection has been revised to state that the payment dates will be January 15, April 15, July 15 and October 15 of the budget year.

Section 5, Application of Penalties, is comparable to §4 of Exhibit E to the current pro forma Delegation Agreement. The section has been revised to provide for the possibility of an

alternative application of penalty monies collected from Registered Entities, if approved by FERC.<sup>9</sup>

Section 6, Budget and Funding for Regional Entity's Non-Statutory Activities, is comparable to §5 of Exhibit E to the current pro forma Delegation Agreement, and requires the Regional Entity to list any non-statutory activities and to describe the methods and procedures it uses to keep statutory funding and expenditures separate from non-statutory funding and expenditures. This section has been revised (i) to require the Regional Entity to provide a description of how its general and administrative costs are allocated between statutory and non-statutory activities, and (ii) to specify that the Regional Entity's non-statutory costs (if any), which cannot be included in the calculation of its assessments, dues, fees and other charges for statutory activities, must include a reasonable allocation of its general and administrative costs.

Section 7 specifies that if, during the course of the fiscal year, the Regional Entity determines it does not or will not have sufficient funds to carry out its delegated functions and related activities, the Regional Entity will submit a proposed amended or supplemental business plan and budget and request for approval of supplemental assessments, reflecting costs, cost increases or funding shortfalls not provided for in the its approved business plan and budget for the year. The section provides for review and approval by NERC of the amended or supplemental budget and assessment, and submission to FERC for approval. The current pro forma Delegation Agreement does not contain a provision requiring the Regional Entity to submit an amended or supplemental budget and assessment request during the course of the year in the event of unexpected costs or funding shortfalls.

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<sup>9</sup> A possible alternative application of penalty payments would be to spread application of a large penalty payment or payments received in a year over two or more years, thereby avoiding large year-to-year fluctuations in assessment levels.

Section 8 provides that NERC will conduct reviews of the quarterly and annual financial statements submitted by the Regional Entity pursuant to §9(h)-(i) of the base agreement. NERC's review of the Regional Entity's financial records was covered in §8(j) of the current base pro forma Delegation Agreement, but this topic has been moved to Exhibit E of the revised pro forma Delegation Agreement.

### **C. Western Electricity Coordinating Council Delegation Agreement**

The following list identifies deviations or differences in the revised WECC Delegation Agreement (**Attachment 9**) from the revised pro forma Delegation Agreement, and also identifies certain differences between the current and revised WECC Delegation Agreements due to reasons other than the changes in the pro forma template.

1. In §1.0 of Exhibit D to the revised WECC Delegation Agreement, WECC adopts the NERC CMEP, Appendix 4C to the NERC ROP, but with the single proviso that §5.3(vii) of the WECC CMEP does not refer to "shortened hearing procedures." This is because the WECC hearing procedures, which are an Attachment to Exhibit D, do not use the shortened hearing procedures that are contained in the NERC uniform Hearing Procedures.<sup>10</sup>

2. Section 2.0 of Exhibit D to the revised WECC Delegation Agreement states that WECC's Hearing Body is the Compliance Hearing Body as established under the WECC Compliance Hearing Body Charter. Section 2.0 contains a description of the composition of the Compliance Hearing Body and a description of the manner in which the specific five-member or three-member Hearing Panel is selected for each hearing.

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<sup>10</sup> NERC and WECC acknowledge that FERC has questioned why the WECC Hearing Procedures does not provide for a shortened hearing procedure as in the NERC uniform Hearing Procedures, and that they are required to file a report with FERC by December 31, 2010 addressing the merits of retaining this deviation. *See* Letter Order issued August 26, 2009, in Docket Nos. RR06-1-022 and RR07-7-008.

3. Section 2.0 of Exhibit D to the revised WECC Delegation Agreement also states that WECC will conduct compliance hearings in accordance with the hearing procedures which are included as the Attachment to Exhibit D. The WECC Hearing Procedures have previously been authorized by the Commission, and were most recently filed with the Commission in a compliance filing dated February 17, 2009.<sup>11</sup> The only change being made to the current version of the WECC Hearing Procedures is the deletion of three definitions from §1.1.4: “Bulk-Power System,” “Reliable Operation,” and “Reliability Standards.” These three definitions are also being deleted from the Definitions section of the NERC uniform Hearing Procedures (*see* §IV.A.2 below and **Attachments 14A-14B**).<sup>12</sup>

4. Section 3.0, Other Decision-Making Bodies, of Exhibit D to the revised WECC Delegation Agreement states that “The WECC Compliance Committee provides general oversight and policy guidance but does not have decision-making authority with respect to compliance matters.”

5. Section 1 of Exhibit E to the revised WECC Delegation Agreement contains additional descriptions of WECC’s statutory activities beyond the listing included in §1 of Exhibit E to the revised pro forma Delegation Agreement:

- Under “Compliance Enforcement,” Exhibit E to the revised WECC Delegation Agreement contains the following text: “This category will encompass WECC’s Compliance Monitoring and Enforcement Program, including activities under the WECC Reliability Management System.” This text (with the addition of the words

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<sup>11</sup> *Compliance Filing of the North American Electric Reliability Corporation in Response to December 19, 2008 Order*, filed February 17, 2009, in Docket Nos. RR06-1-021 *et al.* The Commission accepted this compliance filing in a letter order issued June 1, 2009. *Order on Compliance Filing*, 127 FERC ¶ 61,209 (2009).

<sup>12</sup> These three definitions are being deleted from the NERC Hearing Procedures, Attachment 2 to Appendix 4C to the NERC ROP, because the terms are defined in §200 of the NERC ROP, and Appendix 4C is incorporating definitions in §200 of the ROP rather than restating them.

“Compliance Monitoring”) is included in Exhibit E to the current WECC Delegation Agreement.

- Under “Reliability Assessment and Performance Analysis (including necessary data gathering activities),” Exhibit E to the revised WECC Delegation Agreement contains the following text: “This category includes WECC’s Transmission Expansion Planning Program, and Loads and Resources Activities, and all necessary supporting activities.” This text (with the addition of the words “and all necessary supporting activities”) is included in Exhibit E to the current WECC Delegation Agreement.
- Under “Training and Education,” Exhibit E to the revised WECC Delegation Agreement contains the following text: “This category includes WECC’s Training Program.” This text is also included in Exhibit E to the current WECC Delegation Agreement.
- Under “Situation Awareness,” Exhibit E to the revised WECC Delegation Agreement contains the following text: “This category includes WECC’s Reliability Coordinator Functions, Western Interconnection Synchrophasor Program, WECC Interchange Tool, and all necessary supporting activities.” The reference to “WECC’s Reliability Coordinator Functions” is included in Exhibit E to the current WECC Delegation Agreement. The additional references to “Western Interconnection Synchrophasor Program and WECC Interchange Tool” have been proposed for approval in Docket No. RR10-9-000, where NERC and WECC are requesting Commission approval for (among other things) an amendment to §1 of Exhibit E to the current WECC Delegation Agreement.<sup>13</sup> The additional text “and all necessary supporting activities” is new, and is intended to make it clear that supporting activities for the three expressly-listed activities are also statutory activities that will be funded through the ERO funding mechanism.

6. Section 3 of Exhibit E to the revised WECC Delegation Agreement includes additional text regarding the options available to LSEs and Balancing Authorities in the WECC Region regarding the annual billing of the NERC and WECC assessments: either to have WECC bill and collect the assessments directly from the LSEs in the Balancing Authority’s area, or to have WECC bill only the Balancing Authority which in turn bills and collects the assessment

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<sup>13</sup> See *Petition of the North American Electric Reliability Corporation for Approval of Amended 2010 Business Plan and Budget of the Western Electricity Coordinating Council and Amendment to Exhibit E to Delegation Agreement with the Western Electricity Coordinating Council*, filed April 22, 2010 in Docket No. RR10-9-000. A corrected version of the proposed amendment to Exhibit E was filed in that Docket on May 11, 2010.

from the LSEs in its area and remits the payments to WECC. These provisions are included in §2 of Exhibit E to the current WECC Delegation Agreement.

7. Section 4, Collection of Funding, in Exhibit E to the revised WECC Delegation Agreement differs from the revised pro forma Delegation Agreement to reflect the particular billing, collection and remittance procedures previously established between NERC and WECC and approved by the Commission. Specifically, WECC, acting as the billing and collection agent, bills LSEs and Balancing Authorities in the WECC region one time per year, prior to November 15 of the preceding year, for the entire assessment amount for the year for NERC, WECC and the Western Interconnection Regional Advisory Body (“WIRAB”). WECC remits its collections to NERC, by electronic funds transfer, once per week, along with a breakdown of the collections among NERC statutory funding, WECC statutory funding, and WIRAB statutory funding. Within three business days following receipt of an electronic transfer of collected assessments from WECC, NERC electronically transfers to WECC the portion of the payment received from WECC constituting WECC statutory funding, and electronically transfers to WIRAB the portion of the payment received from WECC constituting WIRAB statutory funding. The provisions implementing this process are already included in Exhibit E to the current WECC Delegation Agreement.<sup>14</sup> In addition, §4(c) of Exhibit E to the revised pro forma Delegation Agreement is deleted from §4 of Exhibit E to the revised WECC Delegation Agreement, because it is unnecessary in light of the particular arrangements for billing, collecting and remitting the WECC statutory assessment.<sup>15</sup>

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<sup>14</sup> See, e.g., *Order Accepting Compliance Filings, Subject to Conditions*, 125 FERC ¶ 61,330 (2008), at PP 11 and 122.

<sup>15</sup> Section 4(c) of Exhibit E to the revised pro forma Delegation Agreement states: “Upon approval by ERO Governmental Authorities of [Regional Entity]’s annual assessment to fund the costs of its delegated functions and related activities, NERC shall pay [Regional Entity]’s annual

8. Section 6 of Exhibit E to the revised WECC Delegation Agreement identifies the Western Renewable Generation Information System as a non-statutory activity of WECC, and provides a description of the methods and procedures used by WECC to keep its funding mechanism for statutory activities separate from its funding mechanisms for non-statutory activities and to record the costs it incurs in performance of non-statutory functions separately from the costs it incurs in performance of its statutory functions. Exhibit E to the current WECC Delegation Agreement also contains a description of these methods and procedures; the description in the revised WECC Delegation Agreement has been updated.

#### **IV. AMENDMENTS TO THE NERC RULES OF PROCEDURE**

##### **A. Process for Development of Proposed Amendments**

NERC and the Regional Entities developed a set of proposed amendments to the NERC ROP in conjunction with their development of the revised pro forma Delegation Agreement. The origin of the development of the revisions to the ROP was the same as the origin of the revisions to the Delegation Agreement, namely, issues identified in the preparation of the *Three-Year ERO Assessment Report*. Revisions have been developed, and are proposed for approval in this filing, to the following sections of and appendices to the NERC ROP:

- Section 400 – Compliance Enforcement
- Section 500 – Organization Registration and Certification
- Section 800 – Reliability Assessment and Performance Analysis
- Section 1000 – Situation Awareness and Infrastructure
- Section 1100 – Annual NERC Business Plans and Budgets

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assessment to the Regional Entity in four equal quarterly payments on January 15, April 15, July 15 and October 15 of the budget year.”

- Section 1200 – Regional Delegation Agreements
- Appendix 4A – *Audit of Regional Entity Compliance Programs*
- Appendix 4B – *Sanction Guidelines*
- Appendix 4C – *Compliance Monitoring and Enforcement Program*

In addition, NERC is proposing to add the *Statement of Compliance Registry Criteria* as an Appendix, identified as Appendix 5B to the ROP, with no changes to the existing text; and to re-label Appendix 5 – *Organization Registration and Certification Manual* as Appendix 5A, with no changes to the existing text.

As required by its Bylaws, NERC posted a set of proposed amendments to the ROP, including to Appendices 4A, 4B and 4C, on March 16, 2010, for a 45-day stakeholder comment period ending April 30, 2010.<sup>16</sup> Comments were received from a total of 17 individuals and organizations. NERC and the Regional Entities considered these comments and made a number of revisions to the proposed amendments based on the comments. The proposed amendments were then submitted to the NERC Board of Trustees for consideration and approval. On May 12, 2010, the NERC Board approved the amendments to the ROP.

#### **B. Amendments to the NERC Rules of Procedure Sections 100-1600**

The following discussion identifies and explains the revisions to Sections 200, 400, 500, 800, 1000, 1100 and 1200 of the NERC ROP on a section-by-section basis. Clean and redlined versions of amended Sections 100 – 1600 of the ROP are provided in **Attachments 3A** and **3B**.

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<sup>16</sup> Article XI, section 2 of the NERC Bylaws requires that proposed amendments to the NERC ROP must be publicly posted for a 45-day comment period before being considered for approval by the NERC Board of Trustees.



## **1. Amendments to Section 200 – Definitions**

The definition of “Confirmed Violation” has been amended to include a violation that the entity has admitted to in a settlement agreement. In addition, a reference to the “appeals process” has been changed to the “hearings and appeals process.” These amendments are consistent with amendments to the definition of this term in §1.1.9 in Appendix 4C.

## **2. Amendments to Section 400 – Compliance Enforcement**

Two recurring reasons for amendments in §400 are: (1) to adopt new or revised terminology adopted in amended Appendix 4C, such as the terms “possible violation,” “alleged violation” and “confirmed violation” and the change of “compliance violation investigation” to “compliance investigation;” and (2) to delete material that is covered in detail in Appendix 4C. The coverage of certain topics in detail in both §400 of the ROP and in Appendix 4C presented the potential for confusion and inconsistency. Therefore, in a number of sections of §400, substantive text (in some cases an entire subsection) has been deleted and replaced with references to Appendix 4C.

**Section 401, Scope of the NERC Compliance Enforcement Program.** Several topics of a generally applicable nature that were previously covered in other parts of §400 have been moved to §401. New §401.10 addresses the treatment of confidential information in the Compliance Monitoring and Enforcement Program, and provides that information will be treated as confidential, and where applicable as critical energy infrastructure information, in accordance with §1500 of the ROP. These provisions have been moved from current §408.3, which is being deleted. New Section 401.11 addresses the public posting of compliance-related information, and provides that when the affected bulk power system owner, operator, or user either agrees to a possible or alleged violation of a reliability standard or a report of a compliance audit or

investigation, or the time for submitting an appeal is expired, or all appeals processes are complete, NERC shall, subject to the confidentiality requirements of the ROP, publicly post each confirmed violation, penalty or sanction, and final compliance audit or compliance investigation report, on its web site. Section 401.11 details the information to be included in the public posting, including a statement by the bulk power system owner, operator or user if it elects to provide one. The provisions of §401.11 have been moved from current §408.6, which is being deleted. New §401.12 provides that NERC compliance monitoring and enforcement program staff shall periodically review and analyze all reports of possible, alleged and confirmed violations to identify trends and other pertinent issues; these provisions have been moved from current §408.5, which is being deleted.

Section 401.9 has been amended to use the terminology possible, alleged and confirmed violations.

**Section 402, NERC Oversight of the Regional Entity Compliance Enforcement Programs.** Section 402.1.3 has been amended to provide that once every five years, rather than once every three years, NERC shall conduct an audit to evaluate how each Regional Entity compliance enforcement program implements the NERC CMEP. Now that the Regional Entity compliance enforcement programs have been established and functioning for approximately three years, and an initial round of NERC audits has been conducted, NERC and the Regional Entities determined that the frequency of these audits could be lengthened to a maximum of five years. Section 402.1.3 has also been amended to state explicitly that such audits will be based on (among other things) Appendix 4C and any directives in effect pursuant to the delegation

agreement.<sup>17</sup> Further, the following text has been added to §402.1.3 to clarify the scope of such audits of cross-border Regional Entities:

In addition, audits of cross-border regional entities shall cover applicable requirements imposed on the regional entity by statute, regulation, or order of, or agreement with, provincial governmental and/or regulatory authorities for which NERC has auditing responsibilities over the regional entity's compliance with such requirements within Canada or Mexico. Participation of a representative of an applicable ERO governmental authority shall be subject to the limitations of sections 3.1.6 and 8.0 of Appendix 4C of these rules of procedure regarding disclosures of non-public compliance information related to other jurisdictions.

Section 402.1.3.2 has been eliminated. This subsection specified that NERC would re-audit Registered Entities that had been audited by a Regional Entity to verify the findings of the Regional Entity's compliance audit and to evaluate how well the Regional Entity compliance program is meeting its delegated authority and responsibilities. This program was time-consuming for NERC and the Regional Entities and a burden to the Registered Entities that were re-audited. NERC and the Regional Entities jointly concluded that this program did not represent an efficient use of resources and that NERC has sufficient other tools available to monitor the effectiveness of the Regional Entities' compliance enforcement programs.

In §402.2, §402.2.1, §402.2.2 and §402.4, specific references have been added to Appendix 4C of the ROP. Section 402.2.2 has also been amended to change the text "NERC shall develop a single, uniform compliance monitoring and enforcement program" to "NERC shall maintain a single, uniform compliance monitoring and enforcement program," which better describes NERC's obligation in this regard going forward.

Section 402.4 has been amended to replace a reference to "the reporting and disclosure process in Section 408" with "the reporting and disclosure process in **Appendix 4C.**" Existing

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<sup>17</sup> As described in §III.B.2.a above, §8(c) of the amended pro forma Delegation Agreement provides for the development and issuance of directives to the Regional Entity(ies).

§408 is being deleted because its subject matter is covered in Appendix 4C. Section 402.4 has also been revised to use the new term “possible violations.”

In §402.5, a sentence describing the authority to issue remedial action directives has been revised as follows:

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 with a reliability standard, where such directive is immediately necessary to protect the reliability of the bulk power system from an imminent threat.

The added text makes the sentence consistent with the definition of “remedial action directive” in Appendix 4C.

Section 402.6 has been amended to update a cross-reference due to reordering and renumbering of later sections in §400.

Section 402.8, concerning confidentiality, has been amended to encompass all information obtained by NERC or a Regional Entity through any CMEP process:

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 obtained and shared during compliance monitoring and enforcement processes including investigations, audits, spot checks, drafting of reports, appeals, and closed meetings.

Section 402.9, concerning Auditor Training, has been amended to delete references to “volunteers” and add a reference to “industry subject matter experts.” NERC and the Regional Entities are continuing to phase out the use of industry volunteers in compliance audits, but will continue to use industry subject matter expertise where resort to such expertise is necessary and appropriate.

**Section 403, Required Attributes of Regional Entity Compliance Enforcement Programs.** The initial paragraph of §403 has been amended to require that each regional Entity

compliance enforcement program must (1) conform to and comply with the NERC uniform CMEP in Appendix 4C, except to the extent of any deviations that are stated in the Regional Entity's delegation agreement;<sup>18</sup> and (2) meet all of the attributes set forth in §403.

In a number of subsections of §403, express references to Appendix 4C have been added.

Section 403.3 has been amended to state, as an additional exception to the prohibition on a Regional Entity sub-delegating its compliance enforcement program duties to entities or persons other than the Regional Entity compliance enforcement program staff, that sub-delegations may occur "by agreement with express approval of NERC and of FERC or other appropriate ERO governmental authority, to another regional entity." This exception allows for arrangements such as the SERC-FRCC and SERC-SPP RE CMEP Agreements now pending before FERC for approval in Docket No. RR10-7-000.

Section 403.4 has been amended to add compliance hearings in which the registered entity contests a mitigation plan component, to the list of compliance hearings which the Regional Entity's board or compliance panel should have authority to conduct.

Sections 403.5, 403.6, 403.6.2, 403.6.3, 403.6.4, 403.7, 403.10.6 (formerly 403.10.5), 403.11.2, and 403.16 (formerly 403.21) have been amended to refer to the compliance monitoring and enforcement program," consistent with the description of this program used throughout §400 and Appendix 4C.

Section 403.6.1 has been amended to expand the scope of the compliance processes in which Regional Entity compliance enforcement program staff shall not have a conflict of interest in the outcome, to all compliance monitoring and enforcement processes, not just compliance violation investigations, compliance audits, reports and sanctions. Similarly, §403.6.2 has been

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<sup>18</sup> Any such deviation would be stated in Exhibit D to the Regional Entity's delegation agreement. See Exhibit D to the revised pro forma Delegation Agreement in **Attachment 1**.

amended to specify that Regional Entity CMEP staff shall have the authority and responsibility to carry out all compliance monitoring and enforcement processes, not just investigations and audits; and should have authority to make determinations of compliance or noncompliance, not just “initial determinations.” Additionally, §403.6.2 has been amended to delete a reference to “regional members,” and add a reference to industry “subject matter” experts, assisting in compliance monitoring and enforcement processes.

Section 403.6.3 has been amended to specify that Regional Entity CMEP staff may call upon independent technical subject matter experts, who have no conflict of interest in the outcome of the compliance monitoring and enforcement process, to provide technical advice in determinations of compliance and noncompliance.

Section 403.7 has been amended to provide for the use of industry subject matter experts, as well as Regional Entity members, to provide technical expertise in CMEP activities. The reference to “volunteers” has been deleted from §403.7.3. Section 403.7.3 has also been amended to provide that industry subject matter experts, Regional Entity members, or Regional Entity committees shall not make determinations (not just “initial” determinations) of noncompliance or levy penalties, sanctions or remedial actions, and that authority and responsibility for evaluating and determining compliance or noncompliance and for levying penalties, sanctions and remedial actions shall not be delegated to any person or entity other than the Regional Entity compliance staff.

Section 403.7.5 has been amended to replace the term “compliance violation investigations” with the new term “compliance investigations.”

Sections 403.8 and 403.9 have been amended to expand references to the regional entity's compliance enforcement program to the compliance monitoring and enforcement program.

Section 403.10 has been amended as follows:

**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.~~

In carrying out compliance monitoring and enforcement processes, NERC and Regional Entity compliance staffs need to be able to request and receive information from Registered Entities without necessarily having to base the request on an “established procedure.” Similarly, a new §403.10.2 has been added, as follows:

The regional entity or NERC has the authority to request information from bulk power system owners, operators, and users pursuant to section 401.3 or this section 403.10 without invoking a specific compliance monitoring and enforcement process in **Appendix 4C**, for purposes of determining whether to pursue one such process in a particular case and/or validating in the enforcement phase of a matter the conclusions reached through the compliance monitoring and enforcement process(es).

NERC and Regional Entity compliance staffs need to be able to request information from Registered Entities without having to specify that the request is based on one of the eight specific compliance monitoring and enforcement processes detailed in Appendix 4C. As the text of new §403.10.2 indicates, in some instances the CMEP staff needs to request and review information from the Registered Entity in order to be able to determine which of the eight CMEP processes is most appropriately used.

Section 403.10.1 has been amended to eliminate potentially ambiguous use of a pronoun.

Section 403.10.3 (formerly §403.10.2) has been amended to state that Regional Entities shall report information to NERC “when required or requested,” and “in accordance with Appendix 4C and other NERC procedures.”

Section 403.10.4 (formerly §403.10.3) has been amended (1) to replace the terms “self-reported, alleged, or confirmed” violations with the new terms “possible, alleged and confirmed” violations; (2) to change the reference to “enforcement authority or enforcement responsibilities” of the Regional Entity to “compliance monitoring and enforcement authority;” and (3) to delete a reference to Section 408, which has been deleted, and replace it with a reference to Appendix 4C.

Section 403.10.5 (formerly §403.10.4) has been amended to state that the regional Entity compliance staff shall review a Registered Entity’s mitigation plan in accordance with Appendix 4C, rather than in accordance with §403.18. The previously-referenced §403.18 has been deleted because the topic of review and approval of mitigation plans is fully covered in Appendix 4C. In addition, the last sentence of §403.10.5, stating that Regional Entity compliance staff may issue remedial action directives, has been deleted. This sentence was out of place in §403.10, the topic of which is “Information Submittal,” and it is covered in §7.0 of Appendix 4C.

Section 403.10.7 (formerly §403.10.6) has been amended to delete the term “spot check,” which limited the processes the Regional Entity could use to verify compliance information submitted by bulk power system owners, operators, and users.

Section 403.11 has been amended to specify that each Regional Entity must “maintain and implement” a program of proactive compliance audits of bulk power system owners, operators, and users responsible for complying with Reliability Standards, and to specify that the audit program must be implemented in accordance with Appendix 4C.



Section 403.11.1 and 403.11.2 have been amended to state expressly what was stated by implication previously, namely, that compliance audits of entities registered as balancing authorities, reliability coordinators or transmission operators will be performed every three years, and will include a component conducted on the Registered Entity's site. Compliance audits of all other registered entities will be performed on a schedule established by NERC.

Section 403.11.3 has been amended to state that a compliance audit shall include a review of supporting documentation and evidence used by the Registered Entity to "demonstrate" compliance for "an appropriate period prior to the compliance audit." Currently the subsection states that an audit will include review of documentation and evidence used by the Registered Entity for its self-certifications since its last compliance audit, which was a more narrowly-focused requirement.

Section 403.11.4, concerning NERC staff and ERO governmental authority participation on compliance audit teams, has been deleted, as this topic is covered in §3.1.5.3 of amended Appendix 4C.

Current §403.12, Compliance Audit Results, and §403.13, Compliance Violation Investigations, have been deleted, as these topics are covered in §3.1.6 and §3.4, respectively, of amended Appendix 4C. (The term "Compliance Violation Investigation" has been replaced with the term "Compliance Investigation" in Appendix 4C and elsewhere.)

Section 403.12 (formerly §403.14) has been amended to specify that "all compliance monitoring and enforcement processes, and information obtained from such processes," are to be non-public "and treated as confidential in accordance with Section 1500 and Appendix 4C" of the ROP, unless the Regional Entity, NERC, FERC or another applicable governmental authority determines a need to conduct a compliance monitoring and enforcement process on a public

basis, or unless advance authorization is obtained from an applicable governmental authority to make a compliance monitoring and enforcement process, or information from a process, public. The current version of this section only encompasses compliance audits and compliance violation investigations, not all CMEP processes. This section has also been amended to specify that NERC and the Regional Entities shall publish (i) schedules of compliance audits scheduled each year, (ii) a public report of each compliance audit, and (iii) notices of penalty and settlement agreements (this provision is consistent with the current provisions of Appendix 4C). Finally, this section has been amended to specify that the prohibition on making information from a compliance monitoring and enforcement process public does not prohibit NERC or a Regional Entity from publicly disclosing “information of general applicability and usefulness to owners, operators, and users of the bulk power system concerning reliability and compliance matters,” so long as specific allegations or conclusions regarding possible or alleged violations are not included in such disclosures.

Current §403.15, Report all Violations, has been deleted, as the requirements for Regional Entities to report possible, alleged, and confirmed violations are covered in detail in §5.0 and §8.0 of amended Appendix 4C.

Section 403.14 (formerly §403.17) has been amended to identify the *Sanction Guidelines* as Appendix 4B to the ROP, and to specify that 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 “in accordance with Appendix 4C.”

Current §403.18, Mitigation of Violations, and current §403.19, Settlement Process, have been deleted, as these topics are covered in detail in §6.0 and §5.6, respectively, of Appendix 4C.

Section 403.15 (formerly §403.20), Regional Hearing Process, has been amended to expressly refer to the hearing process in Attachment 2 to Appendix 4C and the Regional Entity's delegation agreement, as follows:

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, in conformance with Attachment 2 to **Appendix 4C** to these rules of procedure and any deviations therefrom that are set forth in the regional entity's delegation agreement ~~where authorized by applicable legislation or agreement.~~

This subsection has also been amended to add proposed remedial action directives and components of proposed mitigation plans to the list of matters that bulk power system owners, operators and users may use the hearing process to contest. This subsection has been further amended to delete the provision that "in ERCOT, the Public Utility Commission of Texas may act as the final adjudicator" in the Regional Entity hearing process; the delegation agreement between NERC and Texas RE now specifies that the PUCT will act as the hearing body, but the Texas RE Board will be the decision-making body. (*See §III.C.7 above.*) Finally, this section has been amended to state that a bulk power system owner, operator, or user may appeal the outcome of the Regional Entity hearing process to NERC "in accordance with Section 409 of these rules of procedure."

Section 403.16 (formerly §403.21) has been amended to add a reference to Appendix 4C. Additionally, this section has been amended to remove the phrase "with delegated authority" after "regional entity", since all Regional Entities have delegated authority pursuant to their delegation agreements with NERC to carry out the CMEP.

**Section 404, NERC Monitoring of Compliance for Regional Entities or Bulk Power Owners, Operators, or Users.** Revisions have been made in this section to (i) add references to Appendix 4C, (ii) use the phrase "compliance monitoring and enforcement", (iii) replace the

term “compliance violation investigation” with the new term “compliance investigation,” and (iv) replace the term “Compliance Monitor” with “Compliance Enforcement Authority.”

The initial paragraph of §404 has been amended to state that “industry subject matter experts” may be used as appropriate in compliance activities.

Current §404.2, Mitigation Plans, has been deleted because this topic is covered in detail in §6.0 of Appendix 4C.

Section 404.2 (formerly §404.3) has been amended to replace a reference to Section 408 with a reference to Appendix 4C. Current §408 is being deleted because its subject matter is covered in Appendix 4C.

Section 404.3 (formerly §404.4) has been amended to add mitigation plan components imposed by NERC to the list of matters that may be appealed. In addition, the reference to the applicable provisions for such appeals has been changed to Sections 408 through 410, reflecting the deletion and renumbering of sections.

**Section 405, Monitoring of Standards and Other Requirements Applicable to NERC.** This section has been amended to replace a reference to Section 408 with a reference to Appendix 4C. Current §408 is being deleted because its subject matter is covered in Appendix 4C.

**Section 406, Independent Audits of the NERC Compliance Monitoring and Enforcement Program.** Section 406.3 has been amended to replace a reference to Section 408 with a reference to Appendix 4C. Current §408 is being deleted because its subject matter is covered in Appendix 4C.

**Section 407, Penalties, Sanctions, and Remedial Actions.** Section 407.1 has been revised as follows:

**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 to determine if the regional entity's determination is supported by a sufficient record compiled by the regional entity, is consistent with the *Sanction Guidelines* incorporated into these rules as Appendix 4B and with other directives, guidance and directions issued by NERC pursuant to the delegation agreement, and is consistent with penalties, sanctions and remedial actions imposed by the regional entity and other regional entities for ~~consistency with similar~~ violations involving the same or similar facts and circumstances and fairness in application.

As revised, §407.1 is consistent with the criteria for NERC review of Regional Entity dispositions of compliance matters specified in §6(d) of the revised pro forma Delegation Agreement.

Section 407.2 has been amended to refer to the “regional entity compliance monitoring and enforcement program staff,” and to use the correct title of Appendix 4B.

Current §407.3, Hearing Processes, has been deleted. The requirement for a Regional Entity hearing process is covered in §403.15 of the amended ROP as well as in Exhibit D to the pro forma Delegation Agreement.

**[Current] Section 408, Reporting and Disclosure Process.** This section is being deleted in its entirety because the Regional Entity's reporting obligations with respect to compliance monitoring and enforcement process matters are covered in detail in §5.0 and §8.0 of amended Appendix 4C. In addition, (i) the provisions of current §408.3 relating to Confidential Information have been moved to new §401.10 of the amended ROP; (ii) the provisions of §408.5, Violation Information Review, have been moved to new §401.12; and (ii) the provisions of §408.6, Public Posting, have been moved to new §401.11.

**Section 408, Review of NERC Decisions** (formerly §409). Section 408.1 has been amended to provide an updated cross-reference to §409 as the section covering appeals by

Registered Entities of decisions of Regional Entity hearing bodies. There are no other amendments to renumbered §408.

**Section 409, Appeals from Final Decisions of Regional Entities** (formerly §410). The only amendments to this section are in §409.1, where the term “compliance violation investigation” has been replaced by the new term “compliance investigation,” and the description of the compliance determinations of Regional Entities that can be appealed to NERC has been generalized with the addition of the phrase “other compliance monitoring and enforcement process.”

**Section 410, Hold Harmless** (formerly §411). In this section (i) cross-references to §409 and §410 have been changed to §408 and §409, to reflect renumbering of those sections, and (ii) the reference to “industry volunteers” has been replaced by a reference to “industry subject matter experts.”

**Section 411, Requests for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards** (formerly §412). This section has been renumbered, but has not otherwise been amended.

### **3. Amendments to Section 500 – Organization Registration and Certification**

Throughout §500, references to Appendix 5, the NERC *Organization Registration and Certification Manual*, have been changed to Appendix 5A to reflect the renumbering of that Appendix.

**Section 501, Scope of the Organization Registration and Certification Program.** In §501.1.1, the list of types of Registered Entities has been deleted. This amendment removes the need to amend this section if a new category of Registered Entity (*i.e.*, a new reliability

functional category) is created or an existing one is deleted. In addition, text has been added to require bulk power system owners, operators, and users to

Provide NERC and the applicable regional entity with timely updates to information concerning the registered entity's ownership, operations, contact information, and other information that may affect the registered entity's registration status or other information recorded in the compliance registry.

Section 501.1.2 has been amended to read as follows:

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 based on the criteria provided in the NERC *Statement of Compliance Registry Criteria*, which is incorporated into these rules as **Appendix 5B**.

The specific factors listed in current §501.1.2.1 through §501.1.2.6 have been deleted. With the proposed addition of the *Statement of Compliance Registry Criteria* as an Appendix to the ROP, it would be duplicative and potentially confusing and inconsistent to also continue to list the criteria, in a considerably more summary fashion than in the *Statement of Compliance Registry Criteria*, in §501. Following these deleted subsections, the text of §501.1.2 continues with the text concerning Joint Registration Organizations that was formerly numbered as §501.1.2.7.

Section 501.3, Delegation and Oversight, has been amended to make minor grammatical revisions, and to specify that “The regional entity shall administer an organization registration and certification program in accordance with such delegation [from NERC] to meet NERC’s program goals and requirements.” Further, in §501.3.3, which requires NERC to develop and maintain a program to monitor and oversee Regional Entity registration and certification programs, subsection 501.3.3.1 has been amended to specify that “This program shall monitor whether the regional entity carries out its organization registration and certification responsibilities ~~program~~ in accordance with NERC requirements . . . .”

**Section 502, ERO Organization Registration and Certification Program Requirements.** Section 502.1.2 has been amended to add the delegation agreement to the list of documents specifying the NERC requirements for the Organization Registration and Certification Program, that a Regional Entity must follow in carrying out its delegated authority for the program. Section 502.2 has been amended to state: “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~~ responsibilities . . . .” This is consistent with the amendment to §501.3.3.1 described above.

Section 502.2.2.6, which requires NERC to develop and provide training in auditing skills to individuals who participate in certification audits, has been amended to delete references to “industry volunteers” participating in certification audits, and to add a reference to “industry subject matter experts” participating in such audits.

**Section 503, Regional Entity Implementation of Organization Registration and Certification Program Requirements.** In §503.2, which lists the organization registration activities to be performed by the Regional Entities, current subsection 503.2.1, which states “Entities seeking registration shall contact the regional entity in which they operate to become registered and, if necessary, certified,” has been deleted. As provided in §7(b) of the revised pro forma Delegation Agreement, NERC will be responsible for maintaining the single consolidated Compliance Registry and will use information provided by the Regional Entities to register owners, operators, and users of the Bulk Power System on the Compliance Registry.

**Section 504, Appeals.** The first sentence of §504.2 has been amended as follows: “Each regional entity with delegated responsibilities for certification shall establish and maintain a fair, independent, and nondiscriminatory appeals process.” Currently this provision applies to both



registration and certification, however, as noted earlier in the discussion of §7(b) of the revised pro forma Delegation Agreement, the Regional Entities will no longer be responsible for maintaining Regional Compliance Registries to register entities. Additionally, in §504.2, the statement “in ERCOT, the Public Utility Commission of Texas may act as the final adjudicator” has been deleted. Under the Delegation Agreement between NERC and Texas RE, the PUCT will be the hearing body but the Texas RE Board will be the final decision-making body. (*See* §III.C.7 above.)

**Section 505, Program Maintenance.** There are no amendments to this section.

**Section 506, Independent Audit of NERC Organization and Certification Program.**

Section 506.3 has been amended to delete a reference to “the reporting and disclosure process in Section 408,” since §408 of the ROP is being deleted.

**Section 507, Provisions Relating to Joint Registrations and Joint Registration Organizations.** Section 507.7 has been amended to use the new terms “possible violation, alleged violation and confirmed violation” that are being adopted in amended Appendix 4C.

#### **4. Amendments to Section 800 – Reliability Assessment and Performance Analysis**

The amendments to §800 are in §807 and §808. Section 807, Analysis of Major Events, has been amended to add a new subsection (c) (with the subsequent subsections re-lettered accordingly), and §808, Analysis of Off-Normal Events, Potential System Vulnerabilities, and System Performance, has been amended by the addition of a new subsection 3, each with the same text:

Each user, owner, and operator of the bulk power system shall provide NERC and the applicable regional entities with such information as is necessary to enable NERC and the applicable regional entities to carry out their responsibilities under this section.

These amendments are intended to clarify NERC's and the Regional Entities' authority to request and obtain information from bulk power system owners, operators, and users necessary to enable NERC and the Regional Entities to respond to, investigate, analyze, and develop "lessons learned" information concerning, major system events, off-normal events, potential bulk power system vulnerabilities, and bulk power system performance.

In addition, §808.1 and §808.2 have been amended to add references to regional entities, as well as to NERC, having responsibilities for the activities and analyses described in these subsections.

#### **5. Amendments to Section 1000 – Situation Awareness and Infrastructure Security**

The only amendment to §1000 is in §1003.2.5, to change the reference to "Cyber Security Standard" to "Cyber Security Standards." This revision is appropriate to recognize that there are now nine Critical Infrastructure Protection standards in effect.

#### **6. Amendments to Section 1100 – Annual NERC Business Plans and Budgets**

The amendments to §1100 are intended to be consistent with the expanded provisions in §9 and Exhibit E of the revised pro forma Delegation Agreement on the annual NERC and Regional Entity business plans and budgets (*see* §§III.B.2.a and f above). There are no amendments to §1101 and §1102.

**Section 1103, NERC Budget Development.** Section 1103.1 has been amended to delete the provision that the NERC annual budget process "shall be initiated in March" for the following year, and to specify instead that the annual budget process shall be scheduled and conducted so as to allow sufficient time for all necessary actions in the budget development process, leading up to and including "timely submission of the proposed budget to FERC for approval in accordance with FERC regulations." As the NERC (and Regional Entity) business

planning and budgeting process has evolved, it typically begins early in the preceding year (or even late in the second preceding year).

Section 1103.3, which lists the information to be included in NERC's annual budget submissions to FERC and other ERO governmental authorities, has been amended to list information that NERC, based on experience in preparing annual budgets for governmental approvals for 2007, 2008, 2009 and 2010, has found to be appropriate for, and desired by the governmental authorities to be provided in, the budget submissions:

The NERC annual budget submittal to ERO governmental authorities shall include description and explanation of NERC's proposed ERO program activities for the year; the following information: (1) budget component justification based on statutory or other authorities; (2) explanation of how each the budgeted activity lends itself to the accomplishment of the statutory or other authorities; sufficiency of resources provided for in the budget to carry out the ERO program responsibilities; explanation of the (3) ~~methods of calculations~~ ing and budget estimates; identification and explanation of changes in budget components from the previous year's budget; information on staffing and organization charts; and such other information as is required by FERC and other ERO governmental authorities having authority to approve the proposed budget (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.~~

**Section 1104, Submittal of Regional Entity Budgets to NERC.** Section 1104.1 has been amended to more fully describe the cycle of business plan and budget preparation by the Regional Entities working with NERC. The current text only requires the Regional Entity to submit its proposed business plan and budget to NERC by June 1 of the preceding year so that the business plan and budget can be approved by the NERC Board and filed with the applicable governmental authorities. In practice, NERC and the Regional Entities work collaboratively on the preparation of the Regional Entity business plans and budgets for 8 to 10 months prior to the filing date, with several drafts being exchanged and reviewed during this process. The

amendments also specify that the Regional Entity's budget shall include supporting materials in accordance with the format developed by NERC and the Regional Entities (including content listed in the existing text of this section). The specific amendments to §1104.1 are as follows:

Each regional entity shall submit its proposed annual budget for carrying out its delegated authority functions as well as all other activities and funding to NERC in accordance with a schedule developed by NERC and the regional entities, which shall provide for the regional entity to submit its final budget that has been approved by its board of directors or other governing body no later than June 1 July 1 of the prior year, in order to provide sufficient time for NERC's review and comment on the proposed budget and approval of the regional entity budget by the NERC Board of Trustees in time for the NERC and regional budgets to be submitted to FERC and other ERO governmental authorities for approval in accordance with their regulations. The regional entity's budget shall include, together with supporting materials in accordance with the budget and reporting format developed by NERC and the regional entities, 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.

Section 1104.3, concerning NERC's right to review the financial books and records of each Regional Entity, has been deleted. NERC's right to review the Regional Entity's financial records is established by the Delegation Agreement (*see* §8 of Exhibit E to the revised pro forma Delegation Agreement), and therefore §1104.3 was deemed to be unnecessary.

**Section 1105, Submittal of NERC and Regional Entity Budgets to Governmental Authorities for Approval.** Section 1105.1 has been amended to delete the requirement that the budget filing with ERO governmental authorities must include "the previous year's audited financial statements" [of NERC and the Regional Entities]. In accordance with the FERC's Order issued June 29, 2009 approving NERC's proposal to file the annual comparison of the NERC and Regional Entity actual costs to budgets for the preceding year by May 30 (rather than April 1) so that the comparisons can be based on NERC's and the Regional Entities' audited financial statements for the preceding year, NERC will now include its and the Regional

Entities' audited financial statements for the preceding years in the May 30 filings, rather than in the annual business plan and budget filings.

**Section 1106, NERC and Regional Entity Billing and Collections.** The footnote to §1106 has been amended as follows:

A regional entity ~~shall~~ may allocate funding obligations using an ~~NERC approved~~ alternative method approved by NERC and by FERC and other appropriate ERO governmental authorities, as ~~stated~~ provided for in the regional delegation agreement.

The amended text makes it clear that any alternative allocation method to the preferred NEL-based method must be approved by NERC and by FERC and other appropriate governmental authorities.

**Section 1107, Penalty Applications.** Section 1107.1 has been amended (1) to change references to an “investigation” that leads to imposition of a penalty to a “compliance monitoring and enforcement process,” thereby broadening the scope of the provision; and (2) to add a proviso that a different disposition of penalty monies is permitted if it “is provided for in the delegation agreement, or in a contract or a disposition of the violation that is approved by NERC and FERC.” This additional text makes it clear that any alternative disposition of penalty monies must be approved by both NERC and FERC (whether through approval of a provision in a delegation agreement or of a separate agreement).

Sections 1107.2 and 1107.3 have also been amended to change references to an “investigation” that leads to imposition of a penalty to a “compliance monitoring and enforcement process.” In addition, §1107.2 has been amended to specify that penalty monies shall be applied as a general offset to the budget of the entity (*i.e.*, NERC or a Regional Entity) receiving the penalty payment for the subsequent fiscal year if received by July 1, or for the second subsequent fiscal year if received on or after July 1. This amendment formalizes in the

ROP the policy that NERC and the Regional Entities have followed to determine the budget year for which penalty payments should be used as a budget offset.

Section 1107.4, concerning exceptions to the general rule for application of penalty payments, has been amended as follows:

Exceptions or alternatives to the foregoing provisions ~~policy due to statutory or regulatory restrictions~~ will be considered on a case-by-case basis ~~allowed if approved by NERC and by FERC and any other applicable ERO governmental authority.~~

As amended, this section provides for a broader availability of alternative treatment to the general rule for application of penalty payments, but requires approval of any alternative by NERC and by FERC and any other applicable ERO governmental authority. An alternative treatment could include, among other possibilities, using a large penalty payment (or a large aggregate amount of penalty payments received in one year) as a general offset to the receiving entity's budget over two or more years, rather than in a single year as provided by the general rule.

**Section 1108, Special Assessments.** Section 1108 has been amended to expressly recognize the possibility of a filing for approval of an amended or supplemental budget, including if necessary a special or additional assessment for statutory functions, of NERC or a Regional Entity. As amended, this section makes it clear that an amended or supplemental budget and/or assessment request can be filed by NERC for a Regional Entity. The amended provision is consistent with new §7 of Exhibit E to the revised pro forma Delegation Agreement (*see* §III.B.2.f above).

## **7. Amendments to Section 1200 – Regional Delegation Agreements**

**Section 1205, Sub-delegation.** Section 1205 has been amended to remove the absolute prohibition on sub-delegation by a Regional Entity of its delegated responsibilities and

authorities, to allow for sub-delegation to another Regional Entity, with approval by NERC and by FERC and other applicable ERO governmental authorities. The amendment also makes it clear that Regional Entities may share resources so long as the sharing does not result in cross-subsidization or sub-delegation:

The regional entity shall not sub-delegate any responsibilities and authorities delegated to it by its regional delegation agreement with NERC except with the approval of NERC and FERC and other appropriate ERO governmental authorities. Responsibilities and authorities may only be sub-delegated to another regional entity. Regional entities may share resources with one another so long as such arrangements do not result in cross-subsidization or in any sub-delegation of authorities.

**Section 1207, Regional Entity Audits.** Section 1207 has been amended to specify that NERC will audit each Regional Entity approximately every five years, rather than approximately every three years, to verify that the Regional Entity continues to comply with the NERC ROP and the obligations of the delegation agreement. This change is consistent with the revised Delegation Agreements that provide for renewal terms of five years (rather than the initial term of three years). In addition, with the Regional Entities having been in operation for approximately three years carrying out delegated authorities, and with NERC having conducted an initial round of audits, NERC and the Regional Entities believe that, going forward, the NERC audits (and the concomitant expenditure of NERC and Regional Entity time and resources) can be conducted with reduced frequency. Additionally, text has been added to §1207 specifying the scope and methods of conducting the audits:

Audits of regional entities shall be conducted, to the extent practical, based on professional auditing standards recognized in the U.S., including Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards, and standards sanctioned by the Institute of Internal Auditors, and if applicable to the coverage of the audit, may be based on Canadian or other international standards. The audits required by this section 1207 shall not duplicate the audits of regional entity compliance monitoring and enforcement

programs provided for in **Appendix 4A**, Audit of Regional Compliance Programs, to these rules of procedure.

**Section 1208, Process for Considering Registered Entity Requests to Transfer to Another Regional Entity.** A new §1208 has been added to the ROP to establish a formal process for considering, evaluating, and approving (or rejecting) requests by a Registered Entity that is registered in the region of one Regional Entity to have its registration transferred to a different Regional Entity. NERC and Regional Entities have received such requests and concluded that it would be useful and appropriate to have a process for addressing such requests established in the ROP. As detailed in new §1208, the process requires:

- a written request by the Registered Entity to the two Regional Entities, including a statement of reasons justifying the proposed transfer and discussion of impacts on other bulk power system owners, operators, and users;
- posting of the request on the Regional Entities' web sites for a 21-day public comment period;
- consultation between the Regional Entities; §1208.2 specifies factors the regional Entities are to consider in evaluating the request;
- notice to the Registered Entity of the Regional Entity's decision (which may be approval, rejection, or disagreement over whether the proposed transfer should be approved);
- if the Regional Entities agree that the transfer is appropriate, submission of a written request for approval to the NERC Board; §1208.3 specifies the information to be included in the request and considered by the NERC Board;
- if the Regional Entities do not agree that the transfer is appropriate, submission by the Regional Entity that agrees with the transfer of a written request for approval to the NERC Board, with the opportunity for the other Regional Entity to submit a written statement to the NERC Board explaining why the transfer is not appropriate;
- Prior to action by the NERC Board, posting of information on the proposed transfer, including the submission(s) from the Regional Entity(ies), on the NERC web site for a 21-day public comment period; and
- if the proposed transfer is approved by the NERC Board, submission of appropriate amendments to the two Regional Entities' Delegation Agreements to FERC for approval.



Section 1208 also specifies that if the NERC Board disapproves a proposed transfer, the Regional Entity(ies) that believe the transfer would be appropriate may, if requested by the Registered Entity, file a petition with FERC requesting that FERC order amendments to the delegation agreements of the two Regional Entities to effectuate the proposed transfer.

Section 1208 specifies that no transfer of a Registered Entity shall be effective (i) unless approved by FERC, and (ii) any earlier than January 1 of the second calendar year following approval by FERC, unless an earlier effective date is agreed to by both Regional Entities and NERC and is approved by FERC. The provision that a transfer cannot be effective until January 1 of the second calendar year following approval (absent agreement to a different effective date) is intended to allow any impacts of the transfer on the two Regional Entities to be addressed in their budgets and assessments. This amount of lead time is necessary in light of the fact that Regional Entity budgets and assessments for a year are developed during the first 6 or 7 months of the preceding year, submitted to the NERC Board for approval in late July or early August, and submitted to FERC for approval by approximately August 24.

**C. Amendments to Appendix 4A to the NERC Rules of Procedure**

Appendix 4A, *Audit of Regional Entity Compliance Programs*, has been amended to establish more detailed provisions for NERC's audits of Regional Entity compliance monitoring and enforcement programs. Although the amendments are discussed below on a section-by-section basis, Appendix 4A has in fact been comprehensively re-evaluated and rewritten by NERC and the Regional Entities. Clean and redlined versions of amended Appendix 4A are provided in **Attachments 4A** and **4B**.

The first section of amended Appendix 4A, titled "Overview, Objective, and Scope" (expanded from the current title "Overview"), has been amended to use several defined terms

and acronyms used elsewhere in the ROP. The section has also been amended to specify that a purpose of the audit is to determine whether the CMEP, “as implemented by the regional entity, effectively meets the requirements under the CMEP, the NERC Rules of Procedure (ROP), and the corresponding annual implementation plan.” As amended, it also specifies that each year, NERC will establish which standards requirements will be placed into the CMEP “through its annual implementation plan.” The amended section further specifies:

The scope of the regional entity audits includes the CMEP, related sections of the ROP, the annual implementation plan as approved by NERC, and additional directives provided by NERC for implementing the CMEP and related ROP sections.

The second section of amended Appendix 4A, titled “Scheduling,” has been amended to specify that each Regional Entity compliance program will be audited at least once every five years, rather than once every three years. This amendment is consistent with the amendment to §402.1.3 of the ROP. This section has also been amended to specify that the schedule for the Regional Entity audit program is approved by NERC staff, rather than by NERC staff and the NERC Compliance and Certification Committee (“CCC”). NERC believes establishing the audit schedule should be a staff function, without stakeholder participation.

The third section of amended Appendix 4A is a new section, titled “Audit Team,” and consists largely of new text. This section provides that:

- A NERC staff member will be designated Audit Team Lead (“ATL”) for the Regional Entity audits, with responsibility to maintain oversight of the auditing process, and coordinate and facilitate the audit process steps with applicable ERO governmental authorities, the CCC and the audited Regional Entity.
- NERC staff will conduct the audit, in whole or in part, but NERC may also use external, independent auditors to conduct the audit, in whole or in part.
- At the discretion of the CCC, a representative from the CCC may participate as an observer; representatives from applicable ERO governmental authorities may also participate as observers, but subject to the limitations of §3.1.6 and §8.0 of Appendix

4C regarding disclosure of non-public compliance information related to other jurisdictions.

- Compliance staff from other Regional Entities may participate as observers, with consent of NERC and the compliance manager of the Regional Entity being audited.

The requirements in current Appendix 4A that the audit team shall include at least one representative from the CCC (one of whom shall serve as the ATL) and at least one compliance manager from another Regional Entity, have been deleted. Although this section still allows for a CCC representative to participate on the audit team as an observer, at the direction of the CCC, the ATL role should be a NERC staff function. Additionally, the following provision was deleted as unnecessary: “Audit team members shall not be from the regional entity being audited.” Amended Appendix 4A provides that the entire universe of persons who may participate on audit teams consists of NERC staff and independent auditors, and (as observers) representatives of the CCC, applicable ERO Governmental Authorities, and (with consent) compliance staff of other Regional Entities, and does not provide for representatives of the Regional Entity being audited to participate on the audit team.

The fourth section of amended Appendix 4A is titled “Planning or Pre-Audit” (expanded from “Pre-Audit” in current Appendix 4A). It provides for NERC to send a Notification of Intent to Audit letter to the CEO of the Regional Entity to be audited at least 60 days prior to the on-site audit, setting forth the scope of the audit and key audit dates. The NERC ATL will also send a pre-audit questionnaire(s) and request(s) for information to the Regional Entity, which are to be completed and returned, with the requested documentation, 30 days prior to the on-site audit. This section also provides that the Regional Entity may request a planning conference with NERC to review audit scope, logistics, and other coordination matters to effectuate an efficient audit process.

The fifth section of amended Appendix 4A, titled “On-Site Audit and Fieldwork” (expanded from “On-Site Audit” in the current Appendix 4C), specifies that NERC shall evaluate the Regional Entity’s controls, physical security, tools, staff training and internal procedures to meet the requirements of the Regional Entity audit program scope. The section provides that detailed questions related to the Regional Entity’s completed questionnaire(s) and requests for information are evaluated along with a random sampling of applicable evidence, and that the evidentiary review of Regional Entity documentation is used to determine whether the Regional Entity’s program is effective and meeting the requirements specified under “Overview, Objective, and Scope.”

The sixth section of amended Appendix 4A, titled “Reporting” (revised from “Preparation and Posting of the Audit Report” in the current Appendix 4A), provides for the following sequence of events:

- Upon completion of on-site fieldwork, the audit team will provide an exit briefing which will include any preliminary findings and/or results from the examination.
- Within 30 business days following the last day of on-site fieldwork, NERC will provide the Regional Entity with a draft report including a review of the scope, methodology and evaluation of internal controls.
- The Regional Entity has 30 business days to respond to the draft audit report, and may request a conference with NERC to address concerns with the draft report.
- NERC will issue a final report to the Regional Entity 45 business days after receipt of the Regional Entity’s comments on the draft report.
- The Regional Entity is provided an opportunity to respond to the conclusions in the final audit report.
- NERC presents the final audit report to the NERC Board of Trustees Compliance Committee (“BOTCC”).
- After the presentation to the BOTCC, the final report and the Regional Entity’s response are posted on the NERC website.

- If there are exceptions to the identified audit scope, the Regional Entity develops a corrective action plan to resolve the exceptions, and provides quarterly updates to NERC on the status of the corrective actions, until completed.

This section also provides that until NERC issues the final audit report, the draft report and the information provided and discussions held will be kept confidential.

#### **D. Amendments to Appendix 4B to the NERC Rules of Procedure**

The amendments to Appendix 4B, *Sanction Guidelines of the North American Electric Reliability Corporation*, are largely for the purpose of consistency with other provisions of the ROP and Appendix 4C that are being amended, including to more consistently use defined terms; and not for the purpose of making substantive changes to the manner in which, or the basis upon which, penalties and sanctions for violations of Reliability Standard are determined. Clean and redlined versions of amended Appendix 4B are provided in **Attachments 5** and **5B**.

Section 2, Document Scope and Exclusions, of Appendix 4B has been amended (i) to use consistently the new terms “possible violation” and “confirmed violation;” (ii) to provide appropriate (and more specific) cross-references to the NERC Compliance Monitoring and Enforcement Program in Appendix 4C (and to delete references to §400 of the ROP) and; (iii) to replace the awkward term “dispel” a violation with “dismiss.” The amendments to this section eliminate the reference to “applicable regional entity program documents” as a source of the steps a Regional Entity will follow to process a violation from possible to confirmed violation status, as all Regional Entities have now agreed to adopt the NERC uniform CMEP in Appendix 4C for these actions.

Section 3.2, Settlement of Compliance Violations, has been amended (i) to use the new term “possible violation,” and (ii) to replace a reference to §403.19, Settlement Process, of the ROP, which has been deleted, with a reference to Appendix 4C, which sets forth the procedures for settlement of a compliance enforcement matter.

Section 3.3, Settlement Request, has been amended to specify that an entity found in or being investigated for a violation may request settlement negotiations at any time, including prior to issuance of a notice of alleged violation; however, NERC or the Regional Entity may decline to enter into or continue settlement negotiations after the possible violation or alleged violation becomes a confirmed violation. As amended, this section is consistent with §5.6 of amended Appendix 4C. The basis for this provision is explained in the discussion of the amendments to Appendix 4C. (*See §IV.E.5 below.*)

Section 3.5, Timing of Determination of Penalty, Sanction or Remedial Action, has been amended (i) to use the new terms “possible violation” and “alleged violation;” (ii) to replace the term “disputed” (violation) with “dismissed;” and (iii) to specify that the penalty, sanction, or other remedial action for a violation will be determined when the violation becomes a confirmed violation or is resolved as part of a settlement agreement.

Section 3.6, Determining Party, has been amended to specify that “the determination of a penalty, sanction or other remedial action for a violation will generally be undertaken by the same entity determining the violation to be a confirmed violation, but subject to review by NERC if the determination is made by a regional entity.” As amended, this section is consistent with §5.8 and §5.9 of amended Appendix 4C.

In §6, Remedial Action, §6.1, Definition and Anticipated Use has been amended to make it more consistent with the definition of and provisions applicable to Remedial Action Directives in Appendix 4C. Specifically, the first paragraph of this section has been amended as follows:

Remedial actions are directives that may be issued to a bulk power system owner, operator, or user to resolve an alleged violation of a reliability standard by addressing conditions, practices, or any other relevant action or activity that is immediately necessary to terminate or correct to protect the reliability of the bulk power system from an imminent threat. A remedial action directive will be issued when NERC or the regional entity identifies an alleged violation of a reliability

standard that must be corrected immediately to ~~promptly reduce~~ protect the reliability of the bulk power system from the imminent ~~the reliability~~ threat that NERC or the regional entity has identified ~~poses to the reliability of the bulk power system~~.

Additionally, §6.4, Scope of Application, has been amended to specify that:

The scope of remedial action directives issued by NERC or the regional entity will be limited to conditions, practices, or any other relevant actions or activities resulting in noncompliance, or that NERC or the regional entity considers at significant risk of becoming noncompliant, to requirements of the reliability standards, and that present an imminent threat to the reliability of the bulk power system.

Further, §6.5, Availability, has been amended to specify that “NERC or the regional entity may issue remedial action directives to entities in the United States regarding a violation that is immediately necessary to terminate or correct to protect the reliability of the bulk power system from an imminent threat, irrespective of whether that violation is ultimately verified or ~~dispelled~~ dismissed by NERC or the regional entity’s investigation of the violation.” Finally, §6.7, Types of Remedial Actions, has been amended to refer to the need to reduce or eliminate “imminent” threats to the reliability of the bulk power system. As amended, these provisions in §6 are consistent with the definition of “Remedial Action Directive” in §1.1.25, and with §7.0, of amended Appendix 4C.

#### **E. Amendments to Appendix 4C to the NERC Rules of Procedure**

Appendix 4C, *Compliance Monitoring and Enforcement Program*, has been extensively revised. In addition to the changes to the text described in the section-by-section discussion below, all the process flow charts have been removed from Appendix 4C. References in the text to the process charts have also been deleted. These charts were cumbersome to maintain in the document, and presented the potential for inconsistency with the text (which should control), and

therefore for confusion and misunderstanding. Therefore, NERC and the Regional Entities agreed that the charts should be removed from Appendix 4C.

In addition, revisions have been made throughout Appendix 4C (including Attachment 2, Hearing Procedures) to more consistently use defined terms (capitalized to indicate the term is a defined term) and acronyms. Further, because a number of new sections have been added throughout Appendix 4C and other sections have been reordered, cross-references have been revised as necessary throughout Appendix 4C.

Clean and redlined versions of amended Appendix 4C are provided in **Attachments 6A** and **6B**.

#### **1. Section 1.0 – Introduction**

In the initial paragraph of §1.0, the sentence “This is accomplished through compliance monitoring and rigorous proactive Compliance Audits” (referring to monitoring, assessing and enforcing compliance with Reliability Standards) has been deleted, since the CMEP is comprised of more than just Compliance Audits.

At the start of §1.1, Definitions, a statement has been added that capitalized terms used in Appendix 4C shall have the meanings set forth in this section or in §200 of the ROP. This sentence recognizes that some defined terms have been imported from §200 of the ROP. As a result, some terms formerly not capitalized in Appendix 4C are capitalized in amended Appendix 4C, because they are defined in §200 of the ROP (*e.g.*, Bulk Power System).

A number of new defined terms have been added, and some existing defined terms have been modified, to incorporate the progression of steps in the compliance enforcement process embodied in revised Appendix 4C, *i.e.*, a compliance enforcement matter starts with a Preliminary Screen and moves to Possible Violation, then to Alleged Violation, and finally to



Confirmed Violation. New or modified definitions for this purpose include Alleged Violation (§1.1.1<sup>19</sup>), Confirmed Violation (§1.1.9), Notice of Alleged Violation (§1.1.15), Notice of Completion of Enforcement Action (§1.1.16), Notice of Confirmed Violation (§1.1.17), Notice of Possible Violation (§1.1.19), Possible Violation (§1.1.21), and Preliminary Screen (§1.1.22):

- A Preliminary Screen is “an initial evaluation of evidence indicating potential noncompliance with a Reliability Standard has occurred or is occurring, conducted by the Compliance Enforcement Authority for the purpose of determining whether a Possible Violation exists.” It consists of “an evaluation of whether (1) the entity allegedly involved in the potential noncompliance is registered, and (2) the Reliability Standard requirement to which the evidence of potential noncompliance relates is applicable to the entity and is enforceable.” (§1.1.22)
- A Possible Violation is the identification, using one of the compliance monitoring and enforcement processes in Section 3.0 of Appendix 4C, of a possible failure by a Registered Entity to comply with a Reliability Standard that is applicable to the Registered Entity. (§1.1.21) The defined term “Possible Violation” has been added to achieve consistency among the Regional Entities. The concept of a “possible violation” is not new, and in practical terms does not add a new step to the compliance enforcement process. From the beginning of the CMEP, the Commission has required that NERC and the Regional Entities report possible violations of Reliability Standards to the Commission on a non-public basis.
- A Notice of Possible Violation is issued to the Registered Entity and states that a Possible Violation has been identified, provides a brief description of the Possible Violation, and directs the Registered Entity to retain and preserve all data and records relating to the Possible Violation. (§1.1.19)
- An Alleged Violation is a Possible Violation for which the Compliance Enforcement Authority has determined, based on an assessment of the facts and circumstances surrounding the Possible Violation, that evidence exists to indicate a Registered Entity has violated a Reliability Standard. (§1.1.1)
- A Notice of Alleged Violation is issued by the Compliance Enforcement Authority to the Registered Entity pursuant to §5.3 of Appendix 4C. (§1.1.15)
- A Confirmed Violation is an Alleged Violation for which an entity has (1) accepted the finding of the violation and will not seek an appeal, or (2) completed the hearing and appeal process within NERC, or (3) allowed the time for requesting a hearing or submitting an appeal to expire, or (4) admitted to the violation in a settlement agreement. (§1.1.9)

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<sup>19</sup> Section numbers cited in this discussion are the section numbers in the amended Appendix 4C.

- A Notice of Confirmed Violation is a notice issued by the Compliance Enforcement Authority to a Registered Entity confirming the violation of one or more Reliability Standards, as a result of (1) the Registered Entity accepting a Notice of Alleged Violation and the proposed penalty or sanction, or (2) the finding of a violation through a hearing and appeal; or (3) expiration of the period for requesting a hearing or appeal, or (4) the Registered Entity admitting the violation as part of an executed settlement agreement. (§1.1.17)
- A Notice of Penalty is a notice prepared by NERC and filed with the Commission, following approval by NERC of a Notice of Confirmed Violation or a settlement agreement, stating the penalty or sanction imposed or agreed to for the Confirmed Violation or as part of the settlement. (§1.1.18)
- A Notice of Completion of Enforcement Action is a notice issued by the Compliance Enforcement Authority to a Registered Entity, pursuant to Section 5.10 of amended Appendix 4C, stating that an enforcement action is closed. (§1.1.16)

The defined term “Compliance Violation Investigation,” which is one of the compliance monitoring processes, has been changed to “Compliance Investigation.” (§1.1.8)

The defined term “End Date” has been added, as the last date of the period to be covered by a Compliance Audit. (§1.1.10)

The definition of Exception Reporting has been expanded to include “Information provided to the Compliance Enforcement Authority by a Registered Entity indicating that a violation of a Reliability Standard has occurred . . . or enabling the Compliance Enforcement Authority to ascertain the Registered Entity’s compliance.” In addition, the sentence “Some Reliability Standards require Exception Reporting” has been deleted as not appropriately included in a definition. (§1.1.11)

The definition of Mitigation Plan has been internally reorganized for clarity and to reduce it to one sentence, with no substantive change. (§1.1.12)

The definition of NERC Compliance Registry (§1.1.13) is now essentially the same as the definition of “Regional Compliance Registry” in current Appendix 4C (with the phrase “maintained by NERC” added). The defined term “Regional Compliance Registry” has been

deleted, since the Regional Entities will no longer maintain compliance registries. (The definition of “NERC Compliance Registry” in the current Appendix 4C stated it was “a compilation of the Regional Compliance Registries”).

The definition of Registered Entity has been amended to use the defined term Bulk Power System and to delete a reference to the deleted term Regional Compliance Registry. (§1.1.24)

The definition of Remedial Action Directive has been amended to use the defined term Bulk Power System. (§1.1.25)

The definition of Required Date has been amended to delete the sentence “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.” The deleted sentence was not appropriately included in a definition. (§1.1.26)

The definition of Self-Certification has been revised for minor grammatical improvements. (§1.1.27)

The definition of Self-Reporting has been amended to read: “A report by a Registered Entity stating (1) that the Registered Entity believes it has violated a Reliability Standard, and (2) the actions that have been taken or will be taken to resolve the violation.” (§1.1.28) The definition in current Appendix 4C implied that the Registered Entity would make a determination that a violation had occurred, which is a determination to be made by the Compliance Enforcement Authority.

The definition of Spot Checking has been revised to make it only one sentence. The sentence “Spot Checking may require an on-site review to complete” has been deleted as not appropriately included in a definition. (§1.1.29)

## **2. Section 2.0 – Identification of Organizations Responsible for Complying with Reliability Standards**

The revisions to the first five paragraphs of §2.0 reflect the revised roles of NERC and the Regional Entities in registering entities and maintaining the Compliance Registry. NERC will now be responsible for maintaining the single, consolidated Compliance Registry for the entire Bulk Power System; the Regional Entities will no longer maintain individual regional compliance registries. NERC will register entities based on application of the criteria in the *NERC Statement of Compliance Registry Criteria* (which is being incorporated into the ROP as Appendix 5B) to information on owners, operators, and users of the Bulk Power System gathered and provided by the Regional Entities. In addition, in the event of a registration appeal to NERC or an Applicable Governmental Authority, the Regional Entity will provide information requested by NERC concerning how the Registered Entity meets the registration criteria or is otherwise material to the reliability of the Bulk Power System.

In addition, amended §2.0 specifies that “Organizations are responsible to register and to comply with Reliability Standards if they are owners, operators, and users of the Bulk Power System, perform a function listed in the functional types identified in Section II of Appendix 5B, and are material to the reliable operation of the Bulk Power System as defined by the criteria and notes in Appendix 5B.” This affirmative obligation is consistent with the *Statement of Compliance Registry Criteria*. Amended §2.0 also requires the Registered Entity to inform NERC or the applicable Regional Entity promptly of changes to the Registered Entity’s registration information.

Amended §2.0 provides that NERC will notify organizations of their inclusion on the NERC Compliance Registry, and shall inform the Registered Entity at the time of registration of the Reliability Standards that are applicable to the reliability functions for which the Registered

Entity is registered. Further, NERC will maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities. NERC will also provide FERC and other Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

Section 2.0 has been amended in several places to replace references to “Compliance Enforcement Authority” with “NERC and [or] the applicable [each] Regional Entity,” for greater clarity. Finally, the sixth and final paragraph of §2.0 has been amended to show the term Bulk Power System as a defined term.

### **3. Section 3.0 – Compliance Monitoring and Enforcement Processes**

The initial paragraph of §3.0 has been shortened by deleting the list of the individual compliance monitoring processes.

#### **a. Section 3.1 – Compliance Audits**

**Section 3.1.1, Compliance Audit Process Steps.** In the process step listed in §3.1.1, a reference to “the member” has been changed to “the new audit team member(s)” for greater clarity. The fifth and sixth process steps have been revised to use new defined terms, and the fifth step has also been revised to specify that the Compliance Enforcement Authority will conduct a Preliminary Screen for Possible Violations based on the potential noncompliances identified in the audit report. The process step “The Compliance Enforcement Authority provides the final audit report to the Registered Entity and to NERC” has been moved to be the last step listed in sequence.

**Section 3.1.3, Frequency of Compliance Audits.** A grammatical error has been corrected.

**Section 3.1.4, Scope of Compliance Audits.** The existing text (as amended) of §3.1.4 has been captioned as §3.1.4.1, Reliability Standards, and two new subsections with new text

have been added. As amended, §3.1.4.1 specifies that a Compliance Audit shall include those Reliability Standards applicable to the Registered Entity that are identified in the NERC Implementation Plan for the current year (rather than for the current and three previous years), may include other Reliability Standards applicable to the Registered Entity that are identified in the Regional Entity's Regional Implementation Plan for the current year, and may include any other Reliability Standards that are applicable to the Registered Entity. The statement "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," has been deleted from this subsection and is addressed in the next subsection (§3.1.4.2).

New §3.1.4.2, Period Covered, addresses the time period to be covered in a Compliance Audit, and specifies as follows:

The Registered Entity's data and information should show compliance with the Reliability Standards that are the subject of the Compliance Audit for the period beginning with the day after the prior audit by the Compliance Enforcement Authority ended (or the later of June 18, 2007 or the Registered Entity's date of registration if the Registered Entity has not previously been subject to a Compliance Audit), and ending with the End Date for the Compliance Audit. However, if another Compliance Monitoring and Enforcement process has been conducted with respect to the Registered Entity subsequent to the date that would otherwise be the start of the period, the period covered by the Compliance Audit may, in the Regional Entity's discretion, begin with the completion of that Compliance Monitoring and Enforcement process for those Reliability Standards requirements that were the subject of the Compliance Monitoring and Enforcement process. The End Date will be stated in the Compliance Enforcement Authority's notification of the Compliance Audit issued to the Registered Entity pursuant to Section 3.1.1. The Registered Entity will be expected to demonstrate compliance for the entire period described above. However, if a Reliability Standard specifies a document retention period that does not cover the entire period described above, the Registered Entity will not be found in noncompliance solely on the basis of the lack of specific information that has rightfully not been retained based on the retention period specified in the Reliability Standard. However, in such cases, the Compliance Enforcement

Authority will require the Registered Entity to demonstrate compliance through other means.

The time period to be covered by a Compliance Audit, and in particular the starting date for the coverage period, has been a subject of considerable controversy and confusion among Registered Entities and Regional Entities, and the extensive text that has been added in §3.1.4.2 is intended to bring greater clarity and certainty to this topic. An issue of particular concern in the industry relates to the fact that some Reliability Standards specify document retention periods such as one year, six months, or shorter periods, that are less than the time period since the Registered Entity's last Compliance Audit. While a Registered Entity cannot specifically be faulted for failing to retain documents for a longer period than the document retention period stated in the Reliability Standard, there is a need from a compliance monitoring perspective to be able to verify compliance for the time period since the previous compliance monitoring process took place. The text in §3.1.4.2 is intended to balance these concerns by providing that a Registered Entity will not be found in noncompliance solely on the basis of lack of specific information or documentation that has rightfully not been retained based on the retention period specified in the Reliability Standard, but that the Compliance Enforcement Authority will require the Registered Entity to demonstrate compliance by other means.

Finally, new subsection 3.1.4.3 has been added to specify that a Compliance Audit will include a review of any Mitigation Plans which the Registered Entity has not yet completed, for the purpose of determining whether the Registered Entity is making adequate progress towards completion of the Mitigation Plans.

**Section 3.1.5, Conduct of Compliance Audits.** Section 3.1.5 has also been separated into several subsections, with subsection 3.1.5.3 comprised of new text.

Subsection 3.1.5.1, Composition of Compliance Audit Teams, specifies that the audit team shall be comprised of staff from the Compliance Enforcement Authority and such other persons as are included in the audit team pursuant to (new) subsection 3.1.5.3, which addresses observers and other participants. Text stating that NERC compliance staff, FERC, and other regulatory bodies may participate on the audit team has been deleted from this subsection, as this topic is covered in subsection 3.1.5.3. Additionally, a reference to “industry volunteers” as audit team members has been changed to “industry subject matter experts.”

In subsection 3.1.5.2, Requirements for Compliance Audit Team Members, a sentence referring to a transitional matter applicable to Compliance Audits conducted prior to January 1, 2008 has been deleted. Additionally, the fourth point in this subsection has been reorganized to be structurally consistent with the first three points.

Subsection 3.1.5.3 addresses participation in a Compliance Audit by persons other than the audit team of the Regional Entity conducting the audit:

- NERC staff (which may include contractors to NERC) may participate either as observers or as audit team members.
- Members of the Regional Entity’s compliance staff, in addition to the audit team, may participate as observers.
- With permission of the Regional Entity, compliance staff from other Regional Entities may participate as observers or as audit team members.
- Representatives of Applicable Governmental Authorities, including the Commission, to whose reliability jurisdiction the Registered Entity is subject, may participate as observers or as audit team members.
- At the request of the Registered Entity, the Regional Entity may allow representatives of other Registered Entities to attend the audit for educational purposes.

The audit team leader or other staff of the Regional Entity conducting the audit will communicate in advance with observers or other attendees to ensure there are no undue disruptions to the audit, no conflicts of interest, and no other considerations that may be



detrimental to the conduct and quality of the audit. The audit team leader will work with proposed observers and attendees to facilitate observation in a less disruptive manner, or to schedule their participation in, observation of, or attendance at another Compliance Audit in which such issues are not presented.

Finally, in subsection 3.1.5.4, Registered Entity Objections to Compliance Audit Team, only a minor grammatical revision has been made to the existing text of Appendix 4C.

**Section 3.1.6, Compliance Audit Reports.** In the first and third paragraphs of this section, references to “Alleged Violations” have been changed to “evidence of possible noncompliance with Reliability Standards” found by the audit team or to “Possible Violations.” Based on the new progression of steps in the compliance enforcement process in amended Appendix 4C, the Compliance Audit team would not identify “Alleged Violations” but at most “Possible Violations.”

In the second paragraph of this section, revisions have been made to reflect that Bulk Power System is now a defined term in amended Appendix 4C.

The third paragraph of this section specifies that if the final audit report identifies Possible Violations, the audit report, or the portions identifying the Possible Violations, shall not be made public until (i) the Possible Violation is dismissed prior to becoming a Confirmed Violation, (ii) NERC submits a Notice of Penalty to FERC or other Applicable Governmental Authority, or (iii) the Registered Entity admits to a violation or enters into a settlement agreement.

**b. Section 3.2 – Self-Certification**

Section 3.2 has been revised, consistent with the new progression of steps in the compliance enforcement process in amended Appendix 4C, to specify that “If the Compliance

Enforcement Authority concludes, after completing a Preliminary Screen(s), that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.” Additionally, a provision stating that “Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0” has been deleted as redundant; the reporting and disclosure requirements are covered in §8.0.

**c. Section 3.3 – Spot Checking**

Throughout §3.3, revisions have been made for greater clarity, to effect grammatical corrections, and to correctly reflect “Spot Checking” as a defined term. In addition, the final process step for Spot Checking has been revised, consistent with the new progression of steps in the compliance enforcement process in amended Appendix 4C, to specify that “If the Compliance Enforcement Authority concludes, after completing a Preliminary Screen(s), that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.” Also, a provision stating that “Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0” has been deleted as redundant; the reporting and disclosure requirements are covered in §8.0.

**d. Section 3.4 – Compliance Investigations**

Revisions have been made throughout §3.4 to reflect that the name of this compliance monitoring process has been changed from “Compliance Violation Investigation” to “Compliance Investigation,” as well as to correctly reflect other defined terms.

In footnote 4, the term “possible violation” has been changed to the non-defined and more generally-applicable term “potential noncompliance,” to avoid confusion with the defined term “Possible Violation.” A similar revision has been made in the first process step listed in §3.4.1 to avoid confusion with the defined term “Possible Violation.”

The sequence of the fifth and sixth process steps in §3.4.1 has been reversed, to reflect that an on-site visit would typically occur after the Registered Entity has provided data or documentation requested by the Compliance Enforcement Authority.

The process step in §3.4.1 specifying that the Registered Entity may be required to support information it provides by a verification or attestation, or produce officers, employees or other authorized representatives to provide testimony, has been revised and expanded to read as follows:

In conducting the Compliance Investigation, the Compliance Enforcement Authority may require the Registered Entity to (i) 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 information; and (ii) produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the matter(s) that are the subject of the Compliance Investigation, to be interviewed or to provide testimony under oath concerning such matters. The Compliance Enforcement Authority shall determine in each case (i) whether representatives of the Registered Entity shall be allowed to be present when an interview is taking place or testimony is being taken, and (ii) whether, and by what method, the interview or testimony shall be recorded; provided, that counsel for the person being interviewed or giving testimony may be present when the interview is being conducted or testimony is being taken (regardless of whether such counsel also represents the Registered Entity).

The last sentence in the above provision is based on FERC's conclusions in a previous order concerning the processes for gathering information in a compliance (violation) investigation.<sup>20</sup>

The next-to-last process step for Compliance Investigations has been revised, consistent with the new progression of steps in the compliance enforcement process in amended Appendix 4C, to specify that "If the Compliance Enforcement Authority concludes, at any time during the Compliance Investigation, and after completing a Preliminary Screen(s), that there is a Possible

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<sup>20</sup> *April 19, 2007 Order* at P 71. FERC there noted that the procedures it was describing, which are now being incorporated into §3.4.1, are similar to FERC's own investigative rules at 18 C.F.R. §1b.16(b).

Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.” Additionally, a process step stating that “Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0” has been deleted as redundant; the reporting and disclosure requirements are covered in §8.0.

**e. Section 3.5 – Self Reporting**

The final process step for Self-Reporting in §3.5.1 has been revised, consistent with the new progression of steps in the compliance enforcement process in amended Appendix 4C, to specify that “If the Compliance Enforcement Authority concludes, after conducting a Preliminary Screen(s), that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.” Additionally, a process step stating that “Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0” has been deleted as redundant; the reporting and disclosure requirements are covered in §8.0.

**f. Section 3.6 – Periodic Data Submittals**

The fifth process step for Periodic Data Submittals in §3.6.1 has been revised to state that if the Compliance Enforcement Authority’s assessment, based on the Periodic Data Submittal, of the Registered Entity’s compliance indicates there may be a Possible Violation, the Registered Entity will be provided an opportunity to comment on the assessment before it is finalized. Additionally, the process step that specified the Compliance Enforcement Authority notifies the Registered Entity of the completion of the assessment has been deleted. Further, the final process step for has been revised, consistent with the new progression of steps in the compliance enforcement process in amended Appendix 4C, to specify that “If the Compliance Enforcement Authority concludes, after conducting a Preliminary Screen(s), that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.”

With these revisions, an assessment that does not indicate any Possible Violations would not be provided to the Registered Entity for comment, nor would the Registered Entity be notified of the results of the assessment.

Finally, a process step stating that “Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0” has been deleted as redundant; the reporting and disclosure requirements are covered in §8.0.

**g. Section 3.7 – Exception Reporting**

There are no revisions to §3.7.

**h. Section 3.8 -- Complaints**

The initial paragraph of §3.8 has been revised to state that a Complaint received by a Regional Entity will be reviewed to determine if the Complaint provides sufficient basis for initiating another Compliance Monitoring and Enforcement process (rather than a Compliance Violation Investigation), as any one of the other compliance monitoring and enforcement processes could be appropriately used to further investigate the matters raised in a Complaint. Similar revisions have been made in the rest of §3.8, §3.8.1 and §3.8.2 to change “Compliance Violation Investigation” to “Compliance Monitoring and Enforcement process.” Additionally, references to “the applicable provisions of Section 3.4” (the section of Appendix 4C pertaining to Compliance Investigation) have been changed to “the applicable provisions of Section 3.0.”

In §3.8.2, Anonymous Complainant Notification Procedure, two references to “possible violation” have been changed to “the information” and “information indicating violations of Reliability Standards,” to avoid confusion with the defined term “Possible Violation.”

**4. Section 4.0 – Annual Implementation Plans**

There are no revisions to §4.0.

## **5. Section 5.0 – Enforcement Actions<sup>21</sup>**

Section 5.0 has been extensively revised to present the revised, standardized progression of steps for processing evidence of a potential noncompliance discovered by the Compliance Enforcement Authority (*i.e.*, the Regional Entity or NERC, as applicable) through one of the compliance monitoring processes set forth in §3.0, through to Confirmed Violation stage if applicable.<sup>22</sup> Although the Regional Entities and NERC have generally been using these process steps, the revisions to §5.0 (along with the accompanying definitions in §1.1) will standardize these process steps, result in the use of consistent terminology, and provide a clear statement of the process steps in Appendix 4C for the benefit of Registered Entities. Under the revised process steps, upon discovery of evidence of a potential noncompliance with a Reliability Standard, the Compliance Enforcement Authority (the Regional Entity or NERC, as applicable) will follow the following process steps:

- Preliminary Screen to determine if there is a Possible Violation. The Preliminary Screen consists of determining whether (i) the entity allegedly involved in the potential noncompliance is a Registered Entity, and (ii) the Reliability Standard requirement to which the potential noncompliance relates is applicable to the entity and is enforceable. The Compliance Enforcement Authority shall maintain records of all Preliminary Screens. (§5.1)
- Issuance of Notice of Possible Violation to the Registered Entity (assuming the Preliminary Screen results in an affirmative determination).<sup>23</sup> The Notice of Possible

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<sup>21</sup> In the second paragraph of §5.0, a reference to requesting a written determination from “the NERC compliance program officer” concerning a data or information request, has been changed to “NERC director of enforcement,” to reflect the NERC staff member who is now responsible for receiving such requests.

<sup>22</sup> A sentence has been added to §5.0, before the first subsection, specifying that “The following enforcement process is undertaken by the Compliance Enforcement Authority following identification, through one of the Compliance Monitoring and Enforcement processes set forth in Section 3.0, of evidence of noncompliance with a Reliability Standard by a Registered Entity.”

<sup>23</sup> Although this process step is not included in the current Appendix 4C, the Regional Entities have follow the practice of issuing “initial notices of violation,” “preliminary notices of alleged violation,” and similarly-titled notices to Registered Entities, upon initially identifying a possible

Violation states that a Possible Violation by the Registered Entity has been identified, provides a brief description of the Possible Violation, including the Reliability Standard requirement(s) and the date(s) involved, and instructs the Registered Entity to retain and preserve all data and records relating to the Possible Violation. At this point the Compliance Enforcement Authority enters the Possible Violation into the NERC compliance reporting and tracking system (thereby reporting it to NERC<sup>24</sup>); NERC in turn reports the Possible Violation to the NERC BOTCC and to FERC, on a confidential basis.<sup>25</sup> (§5.1)

- **Assessment of the Possible Violation.** After issuing the Notice of Possible Violation, the Compliance Enforcement Authority conducts an assessment of the facts and circumstances surrounding the Possible Violation to determine whether evidence exists to indicate the Registered Entity has violated the subject Reliability Standard requirement(s), or whether the Possible Violation should be dismissed. The Compliance Enforcement Authority may consider additional information in performing this assessment. (§5.2)
- **Issuance of Notice of Alleged Violation to the Registered Entity.** If the Compliance Enforcement Authority determines that evidence exists to indicate the Registered Entity has violated the subject Reliability Standard requirement(s), and the Registered Entity has not yet entered into settlement negotiations, the Compliance Enforcement Authority issues a Notice of Alleged Violation to the Registered Entity.<sup>26</sup> The Notice of Alleged Violation must include the Compliance Enforcement Authority's proposed penalty or sanction, if any, for the Alleged Violation. Other than the requirement that the proposed penalty or sanction must be included in the Notice, the required contents of the Notice of Alleged Violation (as listed in §5.3) have not been changed. (§5.3)

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violation of a Reliability Standard requirement. Under revised Appendix 4C, such notices will consistently be captioned by the Regional Entities as "Notice of Possible Violation."

<sup>24</sup> Entry of the Possible Violation (and, subsequently, the Alleged Violation and the Confirmed Violation) into the NERC compliance violation and tracking system will result in the actual Notices becoming accessible to NERC. Because NERC compliance staff will continuously monitor the compliance reporting and tracking system, the entry of the Possible Violation (as well as the entry of subsequent actions in the enforcement process) into the compliance reporting and tracking system serves to notify NERC of the Regional Entity's action, and eliminates the need to require the Regional Entity to make a separate report to NERC.

<sup>25</sup> The revised process steps will provide a more consistent and more readily identifiable point at which evidence of a possible violation is to be reported to NERC and, in turn, to FERC. This is discussed further under §8.0, Reporting and Disclosure, below.

<sup>26</sup> The provision postponing issuance of a Notice of Alleged Violation if the Compliance Enforcement Authority and Registered Entities have entered into settlement negotiations has been added because some Registered Entities have expressed a desire not to receive a Notice of Alleged Violation (which may result in reporting and disclosure requirements for the Registered Entity) if they are actively engaged in settlement negotiations.

- Reporting the Alleged Violation to NERC and to the Commission. Upon issuing the Notice of Alleged Violation to the Registered Entity, the Compliance Enforcement Authority will also enter the Alleged Violation into the NERC compliance reporting and tracking system. NERC, in turn, within two business days, will provide a copy of the Notice of Alleged Violation to the Commission and, if the Alleged Violation pertains to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority.<sup>27</sup> (§5.3)
- Registered Entity response contesting the Alleged Violation. If the Registered Entity contests the Alleged Violation or the proposed penalty or sanction, it must submit a response explaining its position together with any supporting information and documents. The Compliance Enforcement Authority will schedule a conference with the Registered Entity within 10 business days after receipt of the response. If the Compliance Enforcement Authority and the Registered Entity cannot resolve all issues within 40 days (which may be extended by agreement) following the response, the Registered Entity may request a hearing, or else the Alleged Violation will become a Confirmed Violation. (§5.4)
- Appeal of a Regional Entity Hearing Body decision. If the Registered Entity contests the Alleged Violation and/or proposed penalty or sanction, and requests a hearing, but the Hearing Body rules against the Registered Entity, the Registered Entity may appeal the Hearing Body's decision to NERC in accordance with §409 of the ROP. (§5.7)
- Settlement discussions. The Registered Entity may also request settlement discussions at any time in the process, including prior to issuance of a Notice of Alleged Violation; however, the Compliance Enforcement Authority may decline to engage in or continue settlement negotiations once the Possible Violation or Alleged Violation becomes a Confirmed Violation.<sup>28</sup> NERC must be notified of and may participate in any settlement negotiations. Any settlement agreement must ensure that

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<sup>27</sup> The conditional prohibitions on disclosure of non-public U.S. compliance information to another Applicable Governmental Authority and on disclosure of non-public non-U.S. compliance information to the Commission, that are found in §5.1 of current Appendix 4C, are preserved in §5.3 of revised Appendix 4C.

<sup>28</sup> The provision has been added specifying that NERC or the Regional Entity may decline to engage in or to continue settlement negotiations when the violation becomes a Confirmed Violation, so that Registered Entities will have a strong incentive to enter into settlement negotiations upon receiving a Notice of Possible Violation or Notice of Confirmed Violation. Further, the objective of expeditiously completing the enforcement process will be defeated if a Registered Entity can do nothing until after a violation reaches the Confirmed Violation stage, and then initiate settlement discussions with the Compliance Enforcement Authority.



the reliability of the Bulk Power System will not be compromised, and that no violation of a Reliability Standards will occur, as the result of the settlement, and must provide for waiver of the Registered Entity's right to further hearing and appeal. The Registered Entity may submit an explanatory statement to be included in the settlement agreement, which shall be subject to the consent of the Compliance Enforcement Authority as part of the negotiated agreement. The settlement agreement may state that the Registered Entity (i) admits, or (ii) does not contest, or (iii) neither admits nor denies the Alleged Violation, but may not state that the Registered Entity denies the Alleged Violation. (§5.6)

- Dismissal. If the Compliance Enforcement Authority dismisses a Possible Violation or Alleged Violation before it becomes a Confirmed Violation, the Compliance Enforcement Authority will issue a Notice of Completion of Enforcement Action to the Registered Entity. (§5.10)
- Issuance of Notice of Confirmed Violation. If the Registered Entity (i) accepts (or fails to respond to) the Notice of Alleged Violation, or (ii) contests the Alleged Violation but fails to request a hearing within the ensuing 40-day period, the Compliance Enforcement Authority will issue a Notice of Confirmed Violation or other enforcement action to the Registered Entity and enter the Confirmed Violation into the NERC compliance reporting and tracking system. The Compliance Enforcement Authority and the Registered Entity may agree in writing to extend the 40-day period. (§§5.3-5.4) The Notice of Confirmed Violation will include a detailed record of the enforcement action, including the facts and circumstances analyzed and the information on which the Compliance Enforcement Authority relied in proposing the penalty or sanction. (§5.8)
- Written statement from the Registered Entity. The Registered Entity will also be notified of its right to submit a written explanatory statement to accompany the Notice of Confirmed Violation. The explanatory statement must include the name, title and signature of an officer, employee, attorney or other authorized representative of the Registered Entity. (§5.4)
- NERC review of Notice of Confirmed Violation. NERC will review the Notice of Confirmed Violation and use the information in it to prepare a Notice of Penalty. NERC will advise the Regional Entity of any additional detail or further development of factual findings NERC deems necessary before the Notice of Penalty can be issued. If NERC directs the Regional Entity to revise the penalty determination, either the Registered Entity or the Regional Entity compliance staff may reopen the proceedings on any issue on which the penalty was based, irrespective of whether the issues was previously litigated, settled, or unopposed. (§5.8)
- NERC preparation of Notice of Penalty. NERC will provide a draft Notice of Penalty to the Regional Entity, which in turn will advise the Registered Entity that the Notice of Penalty is pending public filing. NERC will file the Notice of Penalty, along with any written statement provided by the Registered Entity, with the Commission and

any other Applicable Governmental Authority no sooner than five business days after NERC approves the Notice of Confirmed Violation or settlement agreement.<sup>29</sup> The penalty or sanction will be effective upon expiration of the 30 day period after the Notice of Penalty is filed, or such longer period as ordered by the Commission. (§5.9; see also §8.0)

- Payment due invoice and receipt of payment of penalty. Following Commission approval of, or expiration of the period for action by the Commission on, the Notice of Penalty, the Compliance Enforcement Authority will issue a payment due notice and invoice to the Registered Entity for any penalty, specifying that payment is due 30 days from the date of the notice and invoice. Upon receipt of payment, the Compliance Enforcement Authority will issue a notice confirming payment to the Registered Entity. (§5.10)
- Notice of Completion of Enforcement Action. After completion by the Registered Entity of all requirements in the Notice of Penalty and any settlement agreement, the Compliance Enforcement Authority will issue a Notice of Completion of Enforcement Action to the Registered Entity, which will include a release of any data retention directives previously issued. Upon issuance of the Notice of Completion of Enforcement Action, the enforcement action is closed. (§5.10)

None of the notices or other issuances or developments throughout the above-described enforcement process are made public except for, and until, the filing and posting of the Notice of Penalty and/or any settlement agreement.

## **6. Section 6.0 – Mitigation of Violations of Reliability Standards<sup>30</sup>**

### **a. Section 6.1 – Requirement for Submission of Mitigation Plans**

Section 6.1 has been revised to specify that in addition to being required to submit a Mitigation Plan upon being found in violation of a Reliability Standard, a Registered Entity may also submit a proposed Mitigation Plan at any other time, including with a Self-Report; or,

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<sup>29</sup> The conditional prohibitions on disclosure of non-public U.S. compliance information to another Applicable Governmental Authority and on disclosure of non-public non-U.S. compliance information to the Commission, that are found in §5.6 of current Appendix 4C, are preserved in §5.9 of revised Appendix 4C.

<sup>30</sup> In the initial paragraph of §6.0, a reference to requesting a written determination from “the NERC compliance program officer” concerning a data or information request, has been changed to “NERC director of enforcement,” to reflect the NERC staff member who is now responsible for receiving such requests.

without admitting it has committed a violation, in response to a Notice of Possible Violation of Notice of Alleged Violation.

**b. Section 6.2 – Contents of Mitigation Plans**

Section 6.2 has been revised to incorporate use of the terms “Possible Violation,” “Alleged Violation,” and “Confirmed Violation, and to use other defined terms. In addition, a provision has been added to specify that a proposed Mitigation Plan must include “the Registered Entity’s action plan to correct the cause of the Possible, Alleged or Confirmed Violation,” as well as its plan to correct the violation itself.

**c. Section 6.3 – Timetable for Completion of Mitigation Plans**

Section 6.3 has been revised to specify that a Mitigation Plan “should encompass actions necessary to prevent a recurring violation of the Reliability Standard requirements underlying the Possible, Alleged or Confirmed Violation(s).”

**d. Section 6.4 – Submission of Mitigation Plans**

Section 6.4 has been revised to specify that a Registered Entity may submit a Mitigation Plan in response to a Notice of Possible Violation, without being deemed to have admitted the violation or the appropriateness of a penalty or sanction. This section has also been revised to properly use defined terms.

**e. Section 6.5 – Review and Acceptance or Rejection of Mitigation Plans**

A minor revision for clarity has been made to the first sentence of the first paragraph in §6.5. Additionally, a paragraph has been added to §6.5 to provide for the provisional acceptance of a proposed Mitigation Plan by the Regional Entity before it has completed its review of the facts and circumstances underlying the violation:

If a Registered Entity submits a Mitigation Plan prior to issuance of a Notice of Confirmed Violation or entry into a settlement, such as with a Self-Report or in

response to a Notice of Possible Violation, the Regional Entity may provisionally accept the proposed Mitigation Plan. If the Regional Entity subsequently determines, upon completing its assessment of the Possible Violation, that the facts and circumstances are different than those on which the accepted Mitigation Plan was based, the Regional Entity may, by notice to the Registered Entity and to NERC, require the Registered Entity to submit a revised Mitigation Plan that fully addresses the facts and circumstances of the violation. The Regional Entity's notice shall state the additional or different facts and circumstances that need to be addressed in the revised Mitigation Plan. The Registered Entity shall submit a revised Mitigation Plan in response to the notice within thirty (30) days following the date of the notice, unless the Regional Entity specifies or allows a longer time period. The Registered Entity's revised Mitigation Plan shall be subject to review and acceptance or rejection by the Regional Entity and by NERC in accordance with this Section 6.5. If the Regional Entity issues a Notice of Confirmed Violation or enters into a settlement with the Registered Entity and does not identify a need to request modifications to the provisionally-accepted Mitigation Plan based on additional or different facts and circumstances, the Regional Entity shall issue a notice to the Registered Entity, with a copy to NERC, stating that the "provisional" nature of the acceptance is terminated and the acceptance is final. The Regional Entity shall issue such notice within five (5) business days of issuance of the Notice of Confirmed Violation or entry into the settlement.

This provision allows the Regional Entity to provisionally approve a proposed Mitigation Plan before the Regional Entity has completed its investigation or assessment of the noncompliance, so that the Registered Entity can proceed to implement the actions in the Mitigation Plan. Allowing the Registered Entity to proceed to implement its corrective actions as soon as possible, rather than requiring the Registered Entity to wait until the Regional Entity has completed its assessment of the matter, is beneficial to the reliability of the Bulk Power System. However, if the Regional Entity subsequently determines, upon completing its investigation or assessment of the noncompliance, that there are additional or different underlying facts and circumstances that necessitate additional mitigating actions, there needs to be a process by which the Regional Entity can require the Registered Entity to modify or expand the actions in its Mitigation Plan. This new provision in §6.5 provides that process.

Additionally, the last sentence of §6.5 has been revised to specify that NERC will publicly post an approved Mitigation Plan as part of the public posting of the Notice of Penalty in accordance with §8.0 of Appendix 4C or the posting of the settlement in accordance with §5.6.

**f. Section 6.6 – Completion/Confirmation of Implementation of Mitigation Plans**

In the second paragraph of §6.6, a reference to the Compliance Enforcement Authority verifying that the Registered Entity has completed its Mitigation Plan and is in compliance with the subject Reliability Standard, has been changed to Reliability Standard requirement(s). The provisions of a Mitigation Plan will typically relate to specific requirements of Reliability Standards that were found to have been violated.

**g. Section 6.7 -- Recordkeeping**

Section 6.7 has been revised to use the new defined terms Notice of Possible Violation and Notice of Alleged Violation.

**7. Section 7.0 – Remedial Action Directives**

Section 7.0 has been amended to incorporate new defined terms in amended Appendix 4C.

**8. Section 8.0 – Reporting and Disclosure**

Section 8.0 has been revised to provide that Regional Entities shall report all Possible Violations, Alleged Violations and Confirmed Violations to NERC by promptly entering the item into the NERC compliance reporting and tracking system.<sup>31</sup> The current version of this

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<sup>31</sup> The Regional Entity's entry of the item into the compliance reporting and tracking system being implemented by NERC and the Regional Entities will immediately provide NERC, electronically, with the relevant Notice. Therefore, it is no longer necessary to specify that a Regional Entity must separately provide NERC with "a copy" of the Notice of Possible Violation, Alleged Violation or Confirmed Violation within a specific time period (*e.g.*, 2

provision states that Regional Entities “shall report to NERC . . . 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 specified time periods. Consistent with the revised enforcement process steps based on Possible Violations, Alleged Violations and Confirmed Violations, requiring Regional Entities to submit reports to NERC at the “Possible Violation” stage will standardize this reporting process as well. The Possible Violation stage is the stage at which the Regional Entity first has identified a possible failure by a Registered Entity to comply with a Reliability Standard that is applicable to the Registered Entity, but the Regional Entity has not taken the additional investigative or assessment steps to determine that the matter is an Alleged Violation.<sup>32</sup> The reports are to include information regarding the nature of the Possible Violation, Alleged Violation or Confirmed Violation, the name of the Registered Entity involved, the status of any ongoing review and assessment, the name of a knowledgeable Regional Entity staff person to serve as a contact, and in the case of an Alleged Violation or Confirmed Violation, its potential impact on Bulk Power System Reliability.<sup>33</sup>

In P 201 of the *April 19, 2007 Order*, FERC stated that “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

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days/48 hours). Upon the Regional Entity entering the item into the compliance reporting and tracking system, NERC will have received the report.

<sup>32</sup> The Regional Entity’s additional review of the matter after a Notice of Possible Violation is issued may result in a determination that no violation has occurred and the matter should be dismissed before reaching the Alleged Violation stage.

<sup>33</sup> At the Possible Violation stage, before the Regional Entity has conducted an assessment, it is not expected that the Regional Entity would have sufficient information to report the potential impact of the Possible Violation on Bulk Power System reliability.

enforcement action. Nor are we [the Commission] 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.” Under the revised compliance enforcement process steps in §5.0 of amended Appendix 4C, evidence of potential noncompliance with a Reliability Standard that is identified or obtained by a Regional Entity will become a Possible Violation (resulting in issuance of a Notice of Possible Violation) unless the Regional Entity’s Preliminary Screen shows the potential noncompliance is not a Possible Violation. However, the only grounds on which, as the result of the Preliminary Screen, evidence of a potential noncompliance will not become a Possible Violation, are that (i) the entity involved in the matter is not a Registered Entity, (ii) the Reliability Standard requirement to which the evidence relates is not applicable to the entity (*e.g.*, it is applicable to a reliability function for which the Registered Entity is not registered), or (iii) the requirement is not enforceable.<sup>34</sup> (*See* §5.1.)

Section 8.0 has also been revised to delete references to submission of required reports in accordance with (current) §403.15, 403.17 and 403.19 of the ROP. Current §403.15 and §403.19 are being deleted, and current §403.17 (renumbered as §403.14) has been revised to refer to Appendix 4C for the filing and reporting requirements. (*See* §IV.B.1 above.)

Text relating to the contents of Confirmed Violations, including the Registered Entity’s statement, has been deleted because this subject is covered in §5.0. However, §8.0 has been revised to specify that the Regional Entity shall report a Confirmed Violation to NERC at the same time the Notice of Confirmed Violation is issued to the Registered Entity, and that NERC will publicly post each Notice of Penalty on its Web site, with the identity of the violator,

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<sup>34</sup> In addition, amended §5.1 requires the Compliance Enforcement Authority to maintain records of all Preliminary Screens, which will allow its determinations (if any) not to issue a Notice of Possible Violation based on a Preliminary Screen to be audited.

together with any statement submitted by the Registered Entity, when NERC files the Notice of Penalty with FERC. A provision that “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,” has been deleted as unnecessary, since the individual Notices of Penalty are posted on the web site when filed with FERC.

Finally, other revisions have been made to §8.0 to incorporate newly defined terms in Appendix 4C.

## **9. Section 9.0 – Data Retention and Confidentiality**

In §9.2, a reference to “Compliance Violation Investigations” has been changed to the new defined term, “Compliance Investigations.” In §9.3.2, a reference to “industry volunteers” has been changed to “industry subject matter experts,” consistent with revisions made elsewhere in §400 of the ROP and Appendix 4C. In §9.3.3, a reference to §1500 of the ROP has been added in connection with a requirement that critical energy infrastructure information shall be redacted.

## **10. Attachment 2 – Hearing Procedures**

Revisions have been made throughout Attachment 2 in order to consistently capitalize defined terms and to remove capitalization from terms that are not defined terms. These revisions include capitalizing some terms that have become defined terms as the result of the revisions to the text of the Compliance Monitoring and Enforcement Program in Appendix 4C (*e.g.*, “Possible Violation”). In addition, cross-references to sections of the ROP have been revised where necessary due to renumbering of sections in the ROP.

In §1.1.5, Definitions, the definitions of Bulk-Power System, Reliable Operation, and Reliability Standards have been deleted. These terms have been deleted because they are now



defined terms in the CMEP pursuant to §1.1 of the CMEP, and therefore do not need to be separately defined in the Hearing Procedures. (Section 1.1.5 specifies that “as used in these Hearing Procedures, definitions in Section 1.1 of the NERC Compliance Monitoring and Enforcement Program shall apply.”)

Section 1.8, Settlement, has been revised as follows:

Settlements may be entered into at any time pursuant to Section 5.6 of the NERC Compliance Monitoring and Enforcement Program and the Compliance Enforcement Authority’s settlement procedures, provided, that the Compliance Enforcement Authority may decline to engage in or continue settlement negotiations after a Possible Violation or Alleged Violation becomes a Confirmed Violation.

This revision conforms to the revision to §5.6, Settlement Process, of the CMEP (*see* discussion in §IV.E.5 above).

**F. Amendment to Appendix 5A to the NERC Rules of Procedure**

The NERC *Statement of Compliance Registry Criteria* is being added as an Appendix to the NERC ROP. As a result, current Appendix 5, *Organization Registration and Certification Manual*, is being re-numbered as Appendix 5A. No textual changes are being proposed to the *Organization Registration and Certification Manual* from the current version, other than the re-numbering of Appendix 5 to Appendix 5A. **Attachment 7** is a copy of the *Organization Registration and Certification Manual*, renumbered as Appendix 5A.

**G. New Appendix 5B to the NERC Rules of Procedure**

The NERC *Statement of Compliance Registry Criteria* is being incorporated into the NERC ROP as Appendix 5B. Incorporation of the *Statement of Compliance Registry Criteria* into the ROP enables provisions in §500 of the ROP on criteria for registration to be deleted, with the result that the registration criteria are stated in one place, Appendix 5B. (*See* §IV.B.2 above.) No textual changes are being proposed from the current version of the *Statement of*

*Compliance Registry Criteria*, Version 5.0. Incorporation of the *Statement of Compliance Registry Criteria* into the ROP will not change the process used to revise it; NERC already posts proposed revisions to the *Statement of Compliance Registry Criteria* for a notice and comment period, and then submits the revisions for approval by the NERC Board of Trustees and then by the applicable governmental authorities. **Attachment 8** is Version 5.0 of the *Statement of Compliance Registry Criteria*, with a cover page added showing it as Appendix 5B to the ROP.

Respectfully submitted,

Gerald W. Cauley  
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**ATTACHMENT 1A**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**REVISED PRO FORMA DELEGATION AGREEMENT CLEAN VERSION**

(Available on the NERC Website at

[http://www.nerc.com/fileUploads/File/Filings/ProForma\\_DelAgrmt\\_Attachments.pdf](http://www.nerc.com/fileUploads/File/Filings/ProForma_DelAgrmt_Attachments.pdf)

**ATTACHMENT 1B**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**REVISED PRO FORMA DELEGATION AGREEMENT CLEAN VERSION**

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**ATTACHMENT 2A**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**REVISED DELEGATION AGREEMENT**

**WITH**

**WESTERN ELECTRICITY COORDINATING COUNCIL**

**CLEAN VERSION**

(Available on the NERC Website at  
[http://www.nerc.com/fileUploads/File/Filings/WECC\\_DelAgrmt\\_Attachments.pdf](http://www.nerc.com/fileUploads/File/Filings/WECC_DelAgrmt_Attachments.pdf))

**ATTACHMENT 2B**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**REVISED DELEGATION AGREEMENT**

**WITH**

**WESTERN ELECTRICITY COORDINATING COUNCIL**

**REDLINED AGAINST**

**REVISED PRO FORMA DELEGATION AGREEMENT**

(Available on the NERC Website at  
[http://www.nerc.com/fileUploads/File/Filings/WECC\\_DelAgrmt\\_Attachments.pdf](http://www.nerc.com/fileUploads/File/Filings/WECC_DelAgrmt_Attachments.pdf))

**ATTACHMENT 3A**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**REVISED SECTIONS 100-1600**

**OF THE**

**RULES OF PROCEDURE**

**CLEAN VERSION**

(Available on the NERC Website at  
[http://www.nerc.com/fileUploads/File/Filings/AmendedROP\\_Attachments.pdf](http://www.nerc.com/fileUploads/File/Filings/AmendedROP_Attachments.pdf))

**ATTACHMENT 3B**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**REVISED SECTIONS 100-1600**

**OF THE**

**RULES OF PROCEDURE**

**REDLINED VERSION**

(Available on the NERC Website at  
[http://www.nerc.com/fileUploads/File/Filings/AmendedROP\\_Attachments.pdf](http://www.nerc.com/fileUploads/File/Filings/AmendedROP_Attachments.pdf))



**ATTACHMENT 4A**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**REVISED APPENDIX 4A**

**TO THE**

**RULES OF PROCEDURE**

***AUDIT OF REGIONAL ENTITY COMPLIANCE PROGRAMS***

**CLEAN VERSION**

(Available on the NERC Website at  
[http://www.nerc.com/fileUploads/File/Filings/AmendedROP\\_Attachments.pdf](http://www.nerc.com/fileUploads/File/Filings/AmendedROP_Attachments.pdf))

**ATTACHMENT 4B**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**REVISED APPENDIX 4A**

**TO THE**

**RULES OF PROCEDURE**

***AUDIT OF REGIONAL ENTITY COMPLIANCE PROGRAMS***

**REDLINED VERSION**

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**ATTACHMENT 5A**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**REVISED APPENDIX 4B**

**TO THE**

**RULES OF PROCEDURE**

***SANCTION GUIDELINES OF THE***

***NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION***

**CLEAN VERSION**

(Available on the NERC Website at  
[http://www.nerc.com/fileUploads/File/Filings/AmendedROP\\_Attachments.pdf](http://www.nerc.com/fileUploads/File/Filings/AmendedROP_Attachments.pdf))

**ATTACHMENT 5B**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**REVISED APPENDIX 4B**

**TO THE**

**RULES OF PROCEDURE**

***SANCTION GUIDELINES OF THE***

***NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION***

**REDLINED VERSION**

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**ATTACHMENT 6A**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**REVISED APPENDIX 4C**

**TO THE**

**RULES OF PROCEDURE**

***COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM***

**CLEAN VERSION**

(Available on the NERC Website at  
[http://www.nerc.com/fileUploads/File/Filings/AmendedROP\\_Attachments.pdf](http://www.nerc.com/fileUploads/File/Filings/AmendedROP_Attachments.pdf))

**ATTACHMENT 6B**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**REVISED APPENDIX 4C**

**TO THE**

**RULES OF PROCEDURE**

***COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM***

**REDLINED VERSION**

(Available on the NERC Website at  
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**ATTACHMENT 7**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**APPENDIX 5A**

**TO THE**

**RULES OF PROCEDURE**

***ORGANIZATION REGISTRATION AND CERTIFICATION MANUAL***

**RENUMBERED FROM “APPENDIX 5”**

**WITH NO OTHER CHANGES**

(Available on the NERC Website at  
[http://www.nerc.com/fileUploads/File/Filings/AmendedROP\\_Attachments.pdf](http://www.nerc.com/fileUploads/File/Filings/AmendedROP_Attachments.pdf))

**ATTACHMENT 8**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**NEW APPENDIX 5B**

**TO THE**

**RULES OF PROCEDURE**

***STATEMENT OF COMPLIANCE REGISTRY CRITERIA***

(Available on the NERC Website at  
[http://www.nerc.com/fileUploads/File/Filings/AmendedROP\\_Attachments.pdf](http://www.nerc.com/fileUploads/File/Filings/AmendedROP_Attachments.pdf))