BEFORE THE
BRITISH COLUMBIA UTILITIES COMMISSION
OF THE PROVINCE OF BRITISH COLUMBIA

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

NOTICE OF FILING OF THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION OF REVISIONS TO ITS RULES OF PROCEDURE

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May 22, 2012

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I. INTRODUCTION

The North American Electric Reliability Corporation ("NERC") hereby provides notice of revisions to NERC's Rules of Procedure ("ROP"), including revisions to Sections 300, 400, 600, 1000, 1400 and 1700 and to Appendices 2, 4B, 4C, and 5B, and the deletion of Appendices 3C and 6. The proposed revisions are the result of a wide-ranging, comprehensive review of the ROP that was conducted to identify improvements to the underlying processes reflected in the ROP based on the experience to date of NERC and the Regional Entities as the Electric Reliability Organization ("ERO"), to further implement actions identified in 2009 in NERC's *Three-Year ERO Performance Assessment Report*, to eliminate internal inconsistencies, and to make other improvements and clarifications identified by the review teams.

This filing includes the following attachments, comprising clean and redlined versions of the ROP and Appendices incorporating the proposed revisions:[1]

- **Attachments 1A and 1B:** Clean and Redlined Versions of the Revised Rules of Procedure, Sections 100 – 1700
- **Attachments 2A and 2B:** Clean and Redlined Versions of Revised Appendix 2 of the Rules of Procedure – *Definitions Used in the Rules of Procedure*
- **Attachments 3A and 3B:** Clean and Redlined Versions of Revised Appendix 4B of the Rules of Procedure – *Sanction Guidelines of the North American Electric Reliability Corporation*
- **Attachments 4A and 4B:** Clean and Redlined Versions of Revised Appendix 4C of the Rules of Procedure – *Compliance Monitoring and Enforcement Program*
- **Attachments 5A and 5B:** Clean and Redlined Versions of Revised Appendix 5B of the Rules of Procedure – *Statement of Compliance Registry Criteria*

[1] On March 1, 2012, NERC filed notice of revisions to various sections of the ROP and Appendices in connection with the proposed adoption of new Appendix 5C, *Procedure for Requesting and Receiving an Exception from the NERC Definition of Bulk Electric System* (Docket No. RM12-7-000) ("BES Exception Procedure Filing"). Revisions were proposed to Sections 509 and 1700 of the ROP and to Appendices 2, 4B, 5B and 6 (among others). In the instant filing, the ROP revisions noticed in the BES Exception Procedure Filing are incorporated, and the redlined documents submitted in Attachments 1B, 2B, 3B and 5B show only the revisions that are noticed in this filing. In addition, the elimination of Appendix 6 that is noticed in this filing supersedes the revisions to Appendix 6 that were noticed in the BES Exception Procedure Filing in Docket No. RM12-7-000.

In addition, NERC is providing notice of elimination of Appendix 3C of the ROP, *Procedure for Coordinating Reliability Standards Approvals, Remands, and Directives,* and Appendix 6, *System Operator Certification Program Manual.* As discussed in §III.D below, NERC is deleting Appendix 3C because it is no longer necessary. As discussion in §III.H below, Appendix 6 is being deleted because (i) it contains a considerable amount of administrative detail concerning the System Operator Certification Program that does not need to be in the ROP, and (ii), the substantive provisions of Appendix 6 are being moved into Section 600 of the ROP.

The proposed revisions to the ROP, including the proposed deletions of Appendix 3C and Appendix 6, were approved by the NERC Board of Trustees on March 14, 2012.

NERC submitted a petition for approval of the revisions to the Rules of Procedure with the Federal Energy Regulatory Commission ("FERC"), and is also filing a notice of the revisions to the Rules of Procedure with the other applicable governmental authorities in Canada. The proposed rule changes will take effect once they have been approved by FERC.

II. NOTICES AND COMMUNICATIONS

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

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III. BASIS AND PURPOSE OF THE REVISIONS TO THE RULES OF PROCEDURE AND APPENDICES

A. Background

During 2011, NERC formed several teams or working groups to conduct reviews of the ROP and Appendices to identify any revisions that should be considered based on accumulated experience, changes in strategy or processes, FERC orders, stakeholder concerns, and other factors. The last comprehensive review of the ROP had occurred in late 2009 and early 2010 in connection with the renegotiation of NERC's delegation agreements with the Regional Entities and the implementation of actions identified in NERC's *Three-Year ERO Performance Assessment Report* in 2009. The teams included a working group of NERC and Regional Entity Compliance Program personnel and a working group of NERC and Regional Entity Legal personnel. Additionally, NERC departments including Standards, Organization Registration and Certification, and Event Analysis and Investigations, reviewed sections of the ROP and related Appendices pertaining to their activities and responsibilities, and submitted proposed revisions to those provisions.[2] Some of the proposed changes reflected continuing implementation of actions or changes identified in the three-year ERO performance assessment process or in the renegotiation of the delegation agreements.

The proposed revisions developed by the various working groups and NERC departments were carefully reviewed by NERC management to eliminate proposals that, while they may have represented the proponent's view of a better way to state the particular provision, did not appear to be warranted based on experience or on developing changes in processes, or as a clear improvement in the clarity of the text of the provision. Proposed revisions were posted for stakeholder comment on two occasions, in July-August and November-December 2011, and were discussed at several meetings of the NERC Member Representatives Committee and the

[2] Some suggested revisions to the ROP and Appendices that were developed through these processes are still under review and have not yet been presented to the NERC Board for approval, although they may be presented at a later date. These revisions include amendments to Section 500 of the ROP and to Appendices 5A and 8.

NERC Board. Consideration of stakeholder comments and concerns submitted during the positing periods and raised during the discussions at the meetings resulted in changes to some of the proposed revisions and elimination of others of the proposed revisions.

B. Revisions to Sections 100-1700 of the Rules of Procedure

Revisions to the ROP are proposed in Sections 300, 400, 600, 1000, 1400 and 1700. The revisions are shown in legislative style in **Attachment 1B**. The following text provides a section-by-section discussion of the proposed revisions.

1. Section 300 – Reliability Standards Development

Section 304.4 is revised to be consistent with the language used in Appendix 3A of the ROP, *Standard Processes Manual*:[3]

> **Fair Balance of Interests** – The process shall fairly balance the interests of all stakeholders and shall not be dominated by any two Segments as defined in **Appendix 3D**, *Development of the Registered Ballot Body*, of these Rules of Procedure, and no single ~~interest category~~Segment, individual or organization shall be able to defeat a matter.

Section 305.5 is revised to correct an incorrect reference from Appendix 3A of the ROP to Appendix 3D, *Development of the Registered Ballot Body.*

In §306.1, a revision is proposed to the composition of the Standards Committee to include "two officers elected to represent the interests of the industry as a whole," as provided for in Appendix 3B of the ROP, *Procedure for the Election of Members of the NERC Standards Committee*.[4]

In §306.3, Canadian Representatives (on the Standards Committee), the existing, substantive text is deleted and replaced with the statement, "The Standards Committee will include Canadian representatives as provided in **Appendix 3B**, *Procedure for Election of*

[3] *See, e.g.*, page 3 of Appendix 3A: "NERC's Reliability Standards development processes cannot be dominated by any two interest categories, individuals, or organizations and no single interest category, individual, or organization is able to defeat a matter."

[4] *See* Appendix 3B at 2.

Members of the NERC Standards Committee." The inclusion of Canadian representatives on the Standards Committee is covered substantively in Appendix 3B, and therefore does not need to be covered substantively in §306 of the ROP. The revision to §306.3 will eliminate the potential for inconsistency and differing interpretations with the provisions on this topic in Appendix 3B.

The title of §307 is changed from "Standards Process Manager" to "Standards Process Management," and the text of the section is revised to describe a second NERC staff position (in addition to the standards process manager), specifically, the "regional standards manager." The duties of the regional standards manager are "to administer the development of Regional Reliability Standards," to work to achieve the highest degree of integrity and consistency of quality and completeness of the Reliability Standards, and to coordinate with any Regional Entities that develop Regional Reliability Standards to ensure those Regional Reliability Standards are effectively integrated with the NERC Reliability Standards.

Several revisions are proposed to §308, Steps in the Development of Reliability Standards. In §308.1, the text is revised to refer to the processes in Appendix 3A of the ROP, *Standard Processes Manual*, for developing Reliability Standards, including the process for developing Reliability Standards to address national security situations that involve confidential issues. The reference to "urgent action" Reliability Standards is deleted, since the term "urgent action" is no longer used in Appendix 3A. In each of §308.2 and §308.3, the text is revised to reflect that Reliability Standards are "adopted," not "approved," by the NERC Board of Trustees. This change from "approved" to "adopted" makes these provisions consistent with Appendix 3A and with American National Standards Institute ("ANSI") requirements.

Section 309.1 is revised to reflect that Reliability Standards are "adopted," not "approved," by the NERC Board. This change makes this provision consistent with Appendix 3A and with ANSI requirements.

In §309.2, a reference to "expedited action procedure" is changed to "expedited standards development process."

In §309.3, text is deleted that provided that, where an Applicable Governmental Authority directs the development of a Reliability Standard by a deadline, NERC staff must, after preparing a Standard Authorization Request ("SAR"), seek a "stakeholder sponsor" for the SAR, with NERC to be designated as the requester if a stakeholder sponsor cannot be found. With this revision, NERC can be designated as the requester without the need to expend time and resources, in a situation where a deadline for development of a Reliability Standards has been imposed, to attempt to locate a stakeholder sponsor for the SAR. Also in §309.3, a reference to the "expedited action procedures" is changed to "expedited action process" for consistency with Appendix 3A of the ROP, *Standard Processes Manual*.

Section 309.3.1 is deleted as it is no longer necessary based on the current version of Appendix 3A of the ROP, *Standard Processes Manual*.

In §311, Regional Entity Standards Development Procedures, §311.3.1.3 is revised as follows to be consistent with the terminology used in §304.4 and Appendix 3A, *Standard Processes Manual* (as described above):

> **Balanced** – The Regional Reliability Standards development procedure shall have a balance of interests and shall not permit any two interest categories to ~~control the vote on~~dominate a matter or any single interest category to defeat a matter.

Additionally, in §311.3.1.6, the reference is deleted to accreditation of a Regional Reliability Standards development procedure by the Standards Council of Canada being sufficient to establish compliance with the evaluation criteria in §311.3.1. The Standards Council of Canada has advised NERC that accreditation by that body is not available to entities based in the U.S., and the three cross-border NERC Regional Entities are based in the U.S. (Northeast Power Coordinating Council, Midwest Reliability Organization and Western Electricity Coordinating Council).

In §312, pertaining to Regional Reliability Standards, §312.1 is revised to make it clear that proposed Regional Reliability Standards must be submitted to NERC for adoption, and if adopted (not "approved"), are made part of the NERC Reliability Standards. In addition, Sections 312.3.3, 312.3.4, 312.3.5, 312.4.2, 312.4.3, 312.4.4, 312.4.5 and 312.5 are revised to reflect that Regional Reliability Standards are "adopted," not "approved," by the NERC Board (in accordance with ANSI requirements).

In §3.1.3.3, a reference to "concerning NERC proposed Regional Reliability Standard" is replaced with "concerning the proposed Regional Reliability Standard," since the reference to "NERC" in this phrase is incorrect.

In §313.1, "NERC" is inserted before "Reliability Standards" in the second line, for clarity and to avoid confusion with Regional Reliability Standards.

The reference in the title of §315 is revised from "NERC Reliability Standards Development Procedure" to "NERC Standard Processes Manual," to be consistent with the current title of Appendix 3A of the ROP.

In §316, Accreditation, the reference to NERC seeking "continuing accreditation" for its Reliability Standards development procedure from ANSI is deleted and replaced with text stating that NERC shall "seek and maintain accreditation" from ANSI. The reference to "continuing accreditation" is inappropriate because ANSI does not grant "continuing" accreditation. Additionally in §316, the reference to NERC seeking accreditation for its Reliability Standards development procedure from the Standards Council of Canada is deleted. The Standards Council of Canada has advised that accreditation is not available to NERC since it is not based in Canada.

In §317, Five-Year Review of Reliability Standards, the first sentence is revised as follows:

> NERC shall complete a review of each Reliability Standard at least once every five years, or such longer period as is permitted by the American National Standards Institute, from the effective date of the Reliability Standard or the latest revision to the Reliability Standard, whichever is later.

The current text was intended to reflect an accreditation requirement of ANSI that approved standards be reviewed at least once every five years; however, it may be possible to obtain relief from ANSI concerning the requirement that each Reliability Standard be reviewed at least once every five years.

In §318, Coordination with the North American Energy Standards Board ("NAESB"), the reference to a "memorandum of understanding" ("MOU") with the NAESB and the ISO/RTO Council is deleted. The original MOU became unnecessary and has been terminated, with other working mechanisms established with the NAESB and the ISO/RTO Council. However, the key point of this section, which is preserved in the revised text, is that NERC will continue to maintain close working relationships with the NAESB and the ISO/RTO Council to coordinate wholesale electric business standards and market protocols with NERC Reliability Standards.

In §319, Archived Standards Information, the following revisions are made: (1) A reference to Reliability Standards that "expired or were replaced" has been changed to "that have been retired." The revised text is consistent with the terminology that NERC uses elsewhere to describe Reliability Standards that are no longer in effect. (2) The requirement that archived Reliability Standards information be retained for no less than five years has been changed to no less than six years. The minimum retention period has been increased to six years because six years is the maximum Compliance Audit cycle length for Registered Entities. (3) In the last sentence of the section, the reference to "standards process manager" is changed to "NERC standards information manager." The NERC position of standards information manager will be responsible for receiving and responding to requests for archived Reliability Standards information.

Section 320 has been revised to describe generally the process for developing and approving Violation Risk Factors ("VRFs") and Violation Severity Levels ("VSLs"), rather than just the alternate method for adopting VRFs. The title of §320 is revised to reflect the broader

scope of the revised section. New §320.1 states that NERC will follow the process for developing VRFs and VSLs set forth in Appendix 3A, *Standard Processes Manual*. New §320.2 states that if an Applicable Governmental Authority remands or directs a revision to a Board-approved VRF or VSL, the NERC director of standards (based on consultation with the standard drafting team), the Standards Committee, and the NERC director of compliance operations, will recommend one of three actions to the Board: (1) file a request for clarification, (2) file a request for rehearing, or (3) approve the directed revision. Section 320.3, which now contains the "alternative procedure," has been amended to apply to VSLs and well as to VRFs. Section 320.3 (which includes content being moved from ROP §1403, as it is more appropriately located in §300), has also been amended to specify that there will be notice and opportunity for comment before the Board approves a VRF or VSL, and that the Board will consider the inputs of the Member Representatives Committee, affected stakeholders, and NERC staff.

2. Section 400 – Compliance Enforcement

In §401.5.2, the reference to "remedial actions" is changed to "Remedial Action Directives," which is a defined term in Appendix 2 of the ROP, *Definitions Used in the Rules of Procedure*. This revision has been made in a number of places throughout the ROP and Appendices.

In §401.6, Actively Monitored Requirements, the second sentence is revised as follows:

> Compliance is required<u>, and NERC and the Regional Entities have authority to monitor compliance,</u> with all NERC Reliability Standards whether or not they are included in the subset of Reliability Standards and Requirements designated to be actively monitored and audited in the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan.

The intent of this revision is to make it clear that Registered Entities are subject to monitoring for compliance with all Reliability Standards applicable to their registered functions, not just the Reliability Standards on the current "actively monitored" list.

In §401.7, the reference to "remedial actions" is changed to "Remedial Action Directives," which is a defined term in Appendix 2 of the ROP, *Definitions Used in the Rules of Procedure*.

Section 401.8, Multiple Enforcement Actions, is revised to state that a Registered Entity shall not be subject to an enforcement action by NERC and a Regional Entity, "or by more than one Regional Entity (unless the Registered Entity is registered in more than one Region in which the violation occurred)," for the same violation. A Registered Entity should not be subject to an enforcement action by more than one Regional Entity for the same violation, but an exception is provided where the Registered Entity is registered, and the violation occurred, in more than one Region.

In §401.9, the reference to "remedial actions" is changed to "Remedial Action Directives," which is a defined term in Appendix 2 of the ROP, *Definitions Used in the Rules of Procedure*.

In §401.11.3, a reference to "or other Mitigating Activities" is added following "Mitigation Plan." This revision, which is made in a number of places throughout the ROP and Appendices, reflects the fact that actions taken by a Registered Entity to correct and prevent recurrence of a non-compliance are not always memorialized in a formal Mitigation Plan (even though the actions are accepted by the Compliance Enforcement Authority ("CEA"). "Mitigating Activities" is being added as a defined term in Appendix 2, as follows: "actions taken by a Registered Entity to correct and prevent recurrence of a noncompliance, whether or not the actions are embodied in a Mitigation Plan."

In §402.5, the third sentence is revised to make the statement of when a Remedial Action Directive may be issued consistent with the definition of "Remedial Action Directive" (which is also proposed to be revised in Appendix 2). The proposed revised definition of Remedial Action Directive in Appendix 2 is:

> an action (other than a Penalty or sanction) required by a Compliance Enforcement Authority that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat.

Further, §402.5 is revised to state that "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, or is about to engage in an act or practice that would result, in noncompliance with a Reliability Standard . . . ."

In §403, Required Attributes of Regional Entity Compliance Monitoring and Enforcement Programs, revisions are made in §403.6 and §403.7.3 to change references to "remedial actions" to the defined term "Remedial Action Directives." Section 403.6 is also revised to state that the Regional Entity Compliance Staff shall be capable of and required to review and accept Mitigation Plans and other Mitigating Activities. This revision reflects (1) that Regional Entities "accept" proposed Mitigation Plans, which are then "approved" by NERC (see §6.5 of Appendix 4C), and (2) that not all actions taken by a Registered Entity to correct and prevent recurrence of a noncompliance are embodied in a Mitigation Plan (*i.e.*, "Mitigating Activities"). Similarly, §403.10.5 is revised to state that the Regional Entity Compliance Staff shall review and "accept" (not "adopt") a proposed Mitigation Plan.

Section 403.10.5 is also revised to state that a Bulk Power System owner, operator, or user found in noncompliance with a Reliability Standard shall submit a Mitigation Plan "unless an enforcement process is used that does not require a Mitigation Plan." NERC has adopted enforcement process options that do not require the Registered Entity to submit a formal Mitigation Plan.

Section 403.14 is amended to make it clear that Confirmed Violations, Penalties and sanctions specified in a Regional Entity Hearing Body decision (as well as Confirmed Violations, Penalties and sanctions developed by the Regional Entity through the enforcement

process without a hearing) will be provided to NERC for review and filing with the Applicable Governmental Authorities as a Notice of Penalty.

In §403.15, Regional Entity Hearing Process, the third sentence of the first paragraph is revised as follows:

> The Regional Entity hearing process shall be conducted before the Regional Entity board or a balanced committee established by and reporting to the Regional Entity as the final adjudicator <u>at the Regional Entity level</u> . . . .

This clarifying revision reflects that the Regional Entity Hearing Body decision can be appealed to NERC, by the Registered Entity that is the subject of the hearing (under the current ROP) or by the CEA (under the proposed revisions). Additionally, the third paragraph of §403.15 is revised to state that the Regional Entity (as well as the Bulk Power System owner, operator, or user) may appeal the Hearing Body decision to NERC. The revisions to allow the Regional Entity, acting as the CEA, to appeal a Hearing Body decision to NERC are discussed under §409 below.

Section 403.16, Annual Regional Entity Compliance Monitoring and Enforcement Implementation Plan, is revised to specify that Regional Implementation Plans will be submitted to NERC on the schedule established by NERC, generally on or about October 1 (changed from November 1) of the preceding year.

Section 407.1, NERC Review of Regional Entity Penalties and Sanctions, is revised to provide that NERC will review Penalties, Sanctions and Remedial Action Directives specified by a Regional Entity Hearing Body final decision issued pursuant to Attachment 2 of Appendix 4C (*i.e.*, the Hearing Procedures), to determine if the determination is supported by a sufficient record, consistent with the ***Sanction Guidelines*** and other directives, guidance and directions issued by NERC pursuant to the delegation agreement, and consistent with Penalties, sanctions and Remedial Action Directives imposed by the Regional Entity and by other Regional Entities for violations involving the same or similar facts and circumstances. This revision is being

made because in order to perform its function of ensuring consistency in Penalty determinations for similar violations and among Regional Entities, it is necessary for NERC to review Penalties, sanctions and Remedial Action Directives determined by Regional Entity Hearing Bodies, just as it reviews Penalties, sanctions and Remedial Action Directives determined by Regional Entity Compliance Staff.

Sections 407.1 and 407.2 are also amended in several places to change "remedial action" to the defined term "Remedial Action Directive."

In §408.1, §408.3 and §408.5, references to the NERC Director of Compliance are changed to the NERC director of enforcement. Additionally, the last sentence of §408.1 is revised to reflect the proposed changes to allow a Regional Entity to appeal a Hearing Body decision to NERC (see discussion under §409 below).

The title of §409 is changed from "Appeals from Final Decisions of Regional Entities" to "Appeals from Final Decisions of Regional Entity Hearing Bodies." In §409.1, the following changes are made: (1) The text is amended to specify that a Regional Entity acting as the CEA, as well as a Bulk Power System owner, operator or user, may appeal a decision of a Regional Entity Hearing Body to NERC. (2) The text is also amended to specify that the entity appealing must submit its notice of appeal to the NERC director of enforcement (formerly the director of compliance) and provide copies to the Regional Entity and any other Participants in the Regional Entity Hearing Body proceeding. (3) The last sentence of §409.1 is deleted as unnecessary.

The amendment to §409.1 (and corresponding revisions to other ROP sections) to specify that the CEA can appeal a Regional Entity Hearing Body decision to NERC is warranted because as the Regional Entity hearing process has evolved over time through a series of amendments to the uniform Hearing Procedures (Attachment 2 to Appendix 4C) and changes to Regional Entity Compliance Programs (as reflected in Exhibit D to the delegation agreements)

and other governance documents, the Hearing Bodies are not extensions of the Regional Entity Compliance Program, but rather are independent tribunals with separation of functions from the Compliance Program, conducting due process hearings and rendering decisions. Thus, a hearing on a disputed compliance matter will find the Registered Entity litigating against the Regional Entity Compliance Staff before an independent decision-making body. It is therefore appropriate to provide the Regional Entity Compliance Program, as well as the Registered Entity, the ability to appeal the Regional Entity Hearing Body decision to NERC.

While the Regional Entity Hearing Body is the final adjudicator of a compliance dispute at the Regional Entity level, all Participants should have a right of appeal to NERC. The Regional Entities act pursuant to delegated authority from NERC, and, as noted in the discussion of revisions to §407.1, above, NERC has the ultimate responsibility for the correctness and consistency of decisions on compliance matters (both disputed and undisputed). Further, if only the Registered Entity were permitted to appeal the Hearing Body decision to NERC, there would be no process to obtain NERC review of a potentially erroneous Hearing Body decision that was favorable to the Registered Entity. (Of course, the fact that the CEA appeals a Regional Entity Hearing Body decision to NERC does not mean the appeal will succeed on the merits.) If the Regional Entity, acting as the CEA, cannot appeal Hearing Body decisions to NERC, then NERC's ability to review Hearing Body decisions in favor of the Registered Entity for the correctness of the decision and the consistency of the decision with other resolutions of compliance matters (***e.g.***, with determinations made by the CEA through the enforcement process) will be limited or non-existent.[5]

[5]If the CEA cannot appeal a Regional Entity Hearing Body decision to NERC, NERC would still be able to review the Hearing Body decision pursuant to the provisions of proposed revised §407.1 and new §413. However, such a review would not have the benefit of having the issues sharpened for NERC's review through an appellate process in which the CEA and the Registered Entity could present their respective positions and arguments as to the correctness of the Hearing Body decision and as to any errors that, it is contended, were made by the Hearing Body.

In §409.2, the reference to the "compliance hearing before the Regional Entity Hearing Body" is changed to the "proceeding before the Regional Entity Hearing Body."

Sections 409.3 and 409.4 are revised to reflect that the Regional Entity, as well as the Registered Entity or other Participant, may appeal a Regional Entity Hearing Body decision to NERC (see discussion of §409.1 above). Additionally, §409.3 is revised to specify that the Regional Entity shall file the entire record of the Regional Entity Hearing Body proceeding with the NERC director of enforcement (formerly the NERC director of compliance). The requirement that the Regional Entity must provide a copy of the record to the appellant is deleted, as all Participants should be expected to maintain their own copies of the record as it is compiled during the hearing. Finally, §409.3 is revised to specify that Participants in the Hearing Body proceeding other than the appellant shall file their responses to the issues raised in the notice of appeal 35 days after the date of appeal (which will allow for at least a 14-day period after the record of the Hearing Body proceeding is filed with the NERC director of enforcement); and §409.4 is revised to provide that the Participant filing the appeal may file a reply to the responses within 7 days.

Section 409.5 is revised to refer to the record in the "proceeding before" the Regional Entity Hearing Body. Section 409.5 is also revised to specify that in considering an appeal from a Regional Entity Hearing Body decision, the NERC Board of Trustees Compliance Committee ("BOTCC") may, at its discretion, allow other Participants to the Regional Entity Hearing Body proceeding (in addition to the Participant appealing the Hearing Body decision) to appear before the BOTCC.

Section 409.8 is a new section that is added to specify that §409 is not applicable to an appeal taken from a decision of the Regional Entity Hearing Body granting or denying a motion to intervene in the Regional Entity hearing, and that such appeals shall be conducted in accordance with (proposed new) §414 of the ROP (discussed below).

Section 412 is a new section which sets forth the procedures by which the NERC BOTCC will accept or reject a question certified to the BOTCC by a Regional Entity Hearing Body (pursuant to §1.5.12 of the Hearing Procedures in Appendix 4C --- see discussion in §III.F.3 of this Petition, below), and, if the BOTCC decides to accept the certified question, the procedure for receiving argument from the Participants on, and deciding, the question. Section 412.1 provides that a Regional Entity Hearing Body that is conducting a hearing concerning a disputed compliance matter may certify to the NERC Board, for decision, "a significant question of law, policy or procedure the resolution of which may be determinative of the issues in the hearing in whole or in part, and as to which there are other extraordinary circumstances that make prompt consideration by the Compliance Committee appropriate." Section 412.2 provides that the BOTCC may accept or reject the certification of a question, and, if it rejects a certified question, shall issue a written statement that the certification is rejected. Section 412.3 specifies that if the BOTCC accepts a certified question, it shall establish a schedule for the Participants in the Regional Entity Hearing Body decision to submit memoranda and reply memoranda on how the certified question should be decided. The BOTCC may also request, or provide an opportunity for, the NERC compliance operations department, compliance enforcement department, and or the general counsel, to file memoranda on how the certified question should be decided. Section 413.4 specifies that upon receiving the BOTCC's written decision on the certified question, the Regional Entity Hearing Body shall proceed to complete the hearing in accordance with the BOTCC's decision. Finally, §412.5 states that the BOTCC's decision on a certified question shall only be applicable to the hearing from which the question was certified and to the Participants in that hearing. Section 412.5 was added to address stakeholder questions and concerns, raised during the posting and comment periods, as to whether the BOTCC's decision on a certified question in an individual proceeding would have

precedential effect and thereafter be applicable to other compliance enforcement matters arising in the same or in other Regions.

Section 413 is a new section specifying that NERC shall review and process final decisions of Regional Entity Hearing Bodies concerning Alleged Violations, proposed Penalties or sanctions, or proposed Mitigation Plans, that are not appealed pursuant to §409, as though the determination was made by the Regional Entity Compliance Program without a hearing. Section 413 specifies that NERC may require that the decision be modified by the Regional Entity, in accordance with §5.8 (Notification of Confirmed Violation), §5.9 (Notice of Penalty) and §6.5 (Review and Acceptance or Rejection of Proposed Mitigation Plans) of Appendix 4C, *Compliance Monitoring and Enforcement Program.*[6] This provision is being added because in order for NERC to perform its function of ensuring consistency in violation, Penalty and Mitigation Plan determinations for similar facts and circumstances and among Regional Entities, it is necessary for NERC to review determinations made by Regional Entity Hearing Bodies concerning Alleged Violations, Penalties and Mitigation Plans just as NERC reviews findings of violations, Penalties and Mitigation Plans determined or accepted by Regional Entity Compliance Staffs.

Section 414 is a new section that establishes procedures for the review and determination by the NERC BOTCC of appeals of decisions by Regional Entity Hearing Bodies to grant or deny requests for intervention in Regional Entity Hearing Body proceedings. This section is being added to provide an appeal process for Hearing Body decisions on intervention requests, in light of the proposed revisions to §1.4.4 of the Hearing Procedures (Attachment 2 to Appendix 4C) that would allow the Hearing Body to grant intervention requests under limited

[6] Section 5.8 of Appendix 4C pertains to NERC directing the Regional Entity to modify a Penalty, and allows the Registered Entity or the CEA to reopen the proceeding on any issue on which the Penalty was based. Section 6.5 of Appendix 4C pertains to Mitigation Plans and provides that if NERC disapproves a Mitigation Plan that the Regional Entity has accepted, NERC is to return the Mitigation Plan to the Regional Entity with a statement of the reasons for rejection and may include the changes that would result in approval of the Mitigation Plan by NERC.

circumstances. Section 414.1 specifies that the appeal must be initiated by a filing with the NERC director of enforcement within seven days following the date of the Hearing Body's decision granting or denying the request to intervene. Section 414.2 specifies the required contents of the notice of appeal. Section 414.3 specifies deadlines for the record relating to the request to intervene to be transmitted to NERC, for other Participants to file responses to the appeal, and for the Participant appealing to file a reply. Section 414.4 specifies that the BOTCC shall issue a written decision on the appeal, but that if a written decision is not issued within 45 days following the date the notice of appeal was filed, the appeal shall be deemed denied and the decision of the Regional Entity Hearing Body granting or denying the request to intervene shall stand. Finally, §414.5 recognizes that the BOTCC's decision may be appealed to FERC or to another Applicable Governmental Authority having jurisdiction over the matter, in accordance with the authorities, rules and procedures of FERC or other Applicable Governmental Authority.

3. Section 600 – Personnel Certification

Section 600 has been substantially revised and expanded, as a result of the proposed elimination of Appendix 6 to the ROP, *System Operator Certification Program* (see discussion in §III.H below). The substantive provisions of Appendix 6 relating to the Personnel Certification Program are being moved into §600.

Section 601, Scope of Personnel Certification, is revised (1) to reflect the change in the name of the program from System Operator Certification Program to Personnel Certification Program; (2) to state that the Personnel Certification program awards system operator Certification Credentials to individuals who demonstrate that they have attained essential knowledge relating to NERC Reliability Standards as well as principles of Bulk Power System operations; and (3) to state that, except as necessary to obtain approval of the ROP, the NERC Personnel Certification Governance Committee ("PCGC") is the governing body that

establishes the policies, sets fees, and monitors the performance of the Personnel Certification Program for system operators.[7] Additionally, a paragraph stating that the current *System Operator Certification Program Manual* is Appendix 6 to the ROP is deleted.

Section 602, Structure of ERO Personnel Certification Program, contains existing provisions describing the structure of the Personnel Certification Program. In this section, references to the "personnel Certification program governing body" are changed to the "PCGC," since the PCGC is identified in §601 as the governing body.

Section 603, Examination and Maintenance of NERC System Operator Certification Credentials, is a new section that encompasses provisions being moved from Appendix 6. Section 603 describes the basic requirements for obtaining a system operator Certification Credential (*i.e.*, passing an examination, which results in Certification for three years) and maintaining the Certification (*i.e.*, earning the necessary number of Continuing Education Hours ("CE Hours") during the ensuing three-year period). This section also specifies what occurs should the certified operator fail to obtain the necessary amount of CE Hours during the three-year period (the system operator's Credential will be Suspended for twelve months and then Revoked, unless the system operator has accumulated the necessary CE Hours), including the procedure for requesting a hardship clause exception.

Section 604, Dispute Resolution Process, is a new section that encompasses provisions being moved from Appendix 6. Section 604 describes the NERC System Operator Certification Dispute Resolution Process for resolving disputes that arise under the Personnel Certification

[7] Article XII, section 1 of the NERC Bylaws establishes the PCGC as a NERC standing committee whose purpose "shall be to provide oversight to the policies and processes used to implement and maintain the integrity and independence of the Corporation's System Operator Certification Program." Article XII, section 2 specifies that "The [PCGC] shall report directly to the board and the president of the Corporation regarding governance and administration of the System Operator Certification Program; provided, however, that the [PCGC] shall have autonomy in developing and implementing system operator certification eligibility requirements, the development, administration, and scoring of the system operator assessment instruments, and operational processes for the System Operator Certification Program." The independence of the PCGC has been a component of NERC's governance structure since prior to its certification as the ERO, in order to conform as closely as possible to the standards for certifying agencies of the National Association for Competency Assurance.

Program concerning any aspect of the Certification process. The Dispute Resolution Process is for the use of persons who hold an operator Certification, or persons wishing to be certified, to dispute the validity of the examination, the content of the test, the content outlines, or the Registration process. Section 604 details the steps in the Dispute Resolution Process, states that the expenses of the Dispute Resolution Process shall be the responsibility of the parties incurring the expenses, and specifies other requirements of the Dispute Resolution Process.

Section 605, Disciplinary Action, is a new section that encompasses provisions being moved from Appendix 6. Section 605 describes the grounds on which the PCGC may initiate disciplinary action against a system operator (§605.1), the hearing process for the disciplinary action (§605.2), and the possible decisions that may be rendered against the system operator, including no action, Probation, Revoke for Cause, and Termination of Credential (§605.3). Section 605.4 describes the Credential Review Task Force, which will make factual determinations and ultimate determinations as to disciplinary action. Section 605.5 states that the decision of the Credential Review Task Force may be appealed using the Dispute Resolution Process.

Section 606, Candidate Testing Mechanisms, is a current section (currently numbered as §603). The text has not been revised except to capitalize "Personnel Certification Program."

Section 607, Pubic Information, is a current section (currently numbered as §604). The text is revised to state that the Personnel Certification Program shall maintain and publish publicly a System Operator Certification Program Manual, covering topics listed in §607.1; shall maintain and publish publicly a comprehensive summary or outline of the information, knowledge, or functions covered by each system operator Certification examination (§607.2);

and shall maintain and publish publicly, at least annually, a summary of Certification activities for the program (§607.3).[8]

Section 608, Responsibilities to Applicants for Certification or Recertification, is a current section (currently numbered as §605). Items 1- 7 in the list of duties and responsibilities of the Personnel Certification Program are not changed. Items 8 and 9 in the list (implement and publish policies and procedures providing due process for applicants questioning eligibility determination, examination results and Certification status; and develop and maintain program manual containing processes and procedures for applicants for Certification and re-Certification) have been deleted, as these topics are covered in §604 and §607.

Section 609, responsibilities to the Public and to Employers of Certified Practitioners, is a current section (currently numbered as §606). This section is revised (1) to delete the provision that the Personnel Certification Program shall periodically publish a current list of those persons who are certified, and (2) to delete a reference to the disciplinary action program being contained in Appendix 6, as it will now be included in §605.

4. Section 800 – Reliability Assessment and Performance Analysis

The revisions in §800 are in §807 and §808. These sections have been revised to, among other things, provide for a more consistent use of terms, including "major event" and "occurrences." For example, in §807, Analysis of Major Events, the phrase "major blackouts and other system disturbances or emergencies" is replaced with the phrase, "major events affecting the Bulk Power System such as significant losses of Load or generation, significant Bulk Power System disturbances, or other emergencies on the Bulk Power System;" thereafter, the term "major event" is used in §807 and §808. The title of §808 is changed to Analysis of Off-Normal Occurrences, Bulk Power System Performance, and Bulk Power System

[8] The PCGC has developed and issued a revised System Operator Certification Program Manual, containing program administrative details, for the use of system operators and other stakeholders. This manual will not be part of the ROP. The NERC Board accepted the revised manual on February 23, 2012.

Vulnerabilities. Section 808 addresses the analysis of Bulk Power System and equipment performance occurrences that do not rise to the level of a major event described in §807.

Section 807.1 (formerly 807a[9] is revised to state that in responding to a major event, NERC will work with appropriate Registered Entities (as well as with Regional Entities and Reliability Coordinators).

Section 807.3 (formerly 807c) is revised to state that where a Reliability Standard sets forth specific criteria and procedures for reporting Bulk Power System disturbances and events described in that Reliability Standard, Registered Entities subject to the Reliability Standard must report information as required by the Reliability Standard. This section further states that Bulk Power System users, owners and operators shall also provide NERC and Regional Entities with such additional information they request as is necessary to enable them to carry out their responsibilities under this section.

Section 807.4 (formerly 807d) is revised to delete "some" before "NERC analysis" (for which assistance may be needed from government agencies) as potentially unduly limiting.

Section 807.5 (formerly 807e) is revised to provide that NERC will establish, maintain, and revise from time to time, based on experience, a manual setting forth procedures and protocols for communications and sharing and exchange of information between and among NERC, Regional Entities, governmental authorities, industry organizations, and Bulk Power System users, owners and operators, concerning the investigation and analysis of major events.[10]

Section 807.6 (formerly 807f) is revised to state that the procedures of Appendix 8 will be applied as appropriate to the circumstances of the major event.

[9] The subsections in Section 807 have been revised from 807a, 807b, 807c, etc., to 807.1, 807.2, 807.3, etc., to be consistent with the numbering convention used in the rest of the ROP.

[10] NERC, working in conjunction with Regional Entities and industry volunteers, has developed and released an ERO Event Analysis Process document, which was approved by the NERC Board on February 9, 2012.

Section 807.7 (formerly 807g) is revised to state that NERC will disseminate to the industry findings and recommendations of general applicability from event analyses, "through various means appropriate to the circumstances," including in accordance with §810. This revision will give NERC greater flexibility in determining and using the most effective means to disseminate information gained from event analyses to the industry.

Section 808.1 is revised to state that NERC and Regional Entities will analyze potential vulnerabilities to the Bulk Power System "that they discover or that are brought to their attention by other sources including government agencies."

Section 808.2, similar to §807.7, is also revised to state that NERC and Regional Entities will screen and analyze off-normal occurrences, Bulk Power System performance, and potential Bulk Power System vulnerabilities for significance, and will disseminate information from those indicated as having general applicability to the industry "through various means appropriate to the circumstances," including in accordance with §810.

Section 808.3 is revised to state that where a Reliability Standard sets forth specific criteria and procedures for reporting Bulk Power System disturbances and events described in that Reliability Standard, Registered Entities subject to the Reliability Standard must report information as required by the Reliability Standard. This section further states that Bulk Power System users, owners and operators shall also provide NERC and Regional Entities with such additional information they request as is necessary to enable them to carry out their responsibilities under this section.

5. Section 1000 – Situation Awareness and Infrastructure Security

Section 1002 has been amended to state NERC's new policy regarding maintenance and financial support of existing and potential new reliability tools and support services. NERC may assist in the development of tools and other support services for the benefit of Reliability Coordinators and other system operators to enhance reliability, operations and planning, by

working with industry to identify new tools, collaboratively develop requirements, support development, provide an incubation period, and at the end of that period transition the tool or service to another group or owner for long term operation of the tool or provision of the service. NERC may also develop reliability tools on its own, but will consult with industry concerning the need for the tool prior to development. Tools and services being maintained by NERC as of January 1, 2012 will be reviewed and, as warranted, transitioned to an appropriate industry group or organization. NERC will develop and maintain a strategic reliability tools plan that will list the tools and services being maintained by NERC and, where applicable, the plans for transition to an appropriate industry group or organization.

6. Section 1400 – Amendments to the NERC Rules of Procedure

Section 1401 is revised to provide that requests to amend or repeal the ROP may be submitted by (among other sources) (i) fifty (rather than ten) Members of NERC, which must include Members from at least three membership Sectors; (ii) a committee (rather than "standing committee") of NERC, or (iii) an officer of NERC (rather than of "the ERO"). These revisions are necessary to correct inconsistencies with Article XI, section 2 of the NERC Bylaws. The Bylaws provision specifies that proposals to adopt a new ROP or to amend or repeal an existing ROP may be submitted by (i) the Member Representatives Committee, (ii) any 50 Members of NERC, which shall include Members in at least three Sectors, (iii) a NERC committee to whose purpose and functions the Rule of Procedure pertains, or (iv) an officer of NERC.[11]

Section 1402, Alternative Procedure for Violation Risk Factors, is deleted and its subject matter, which is more appropriately placed in §300 of the ROP, is moved to §320.3 (see discussion in §III.B.1 above).

[11] During the comment periods, a number of commenters stated that the number of Members specified in §1401 should not be increased and instead, the number of Members specified in the Bylaws should be decreased. In the short term, at least, the higher-tier document (the Bylaws) needs to control, and therefore ROP §1401 needs to be amended to be consistent with the Bylaws provision. However, longer term, NERC may consider whether the Bylaws should be amended to specify that action by a smaller number of Members than 50 is required in order to place a proposed amendment to the ROP into consideration.

7. Section 1700 – Challenges to Determinations

Notice of new §1701 and §1702 of the ROP were filed on April 13, 2011. In the BES Exception Procedure Filing (filed on March 1, 2012), NERC submitted notice of revisions to §1701 and a new §1703. In the instant filing, additional revisions are noticed to §1702.7, §1702.8, §1702.9 and §1703.2 to implement certain changes to capitalization and definition conventions that were adopted in a set of ROP revisions that were submitted on December 20, 2011. The ROP revisions submitted on December 20, 2011 did not include any proposed changes to §1700. In addition, scrivener's errors are corrected in §1702.7 (in the second line, a reference to "Region Entity" is corrected to "Regional Entity") and §1702.9 (in the first line, "Coordinator" is inserted after "Planning").

C. Revisions to Appendix 2, *Definitions Used in the Rules of Procedure*

Appendix 2 was originally submitted on December 20, 2011. Revisions to Appendix 2 (as originally filed) were included in the BES Exception Procedure Filing. The instant filing includes additional revisions to Appendix 2 to incorporate new defined terms and revisions to defined terms resulting from the other revisions to the ROP and Appendices in this filing. The following defined terms are being added or revised in Appendix 2 and are shown in the redlined version, **Attachment 2B**.

- Annual Audit Plan – this definition, which is used in Appendix 4C, is revised. See the discussion in §III.F.1.a below relating to Appendix 4C.
- Certification – this definition is revised to reflect the deletion of Appendix 6 and the movement of its substantive provisions to ROP §600.
- Clerk – this definition, which is used in §400 of the ROP and in the Hearing Procedures, is revised. See the discussion in §III.F.3 below relating to Attachment 2 (Hearing Procedures) to Appendix 4C.
- Confirmed Violation – this definition, which is used in §400 of the ROP and in Appendix 4C, is revised. See the discussions in §III.F.1.a below relating to Appendix 4C.

- Continuing Education Hour or CE Hour – this definition, which is used in ROP §600, has been revised by the PCGC to reflect current practice and the PCGC's System Operator Certification Manual. The revised definition is: "means based on sixty clock minutes, and includes at least fifty minutes of participation in a group or self-study learning activity that meets the criteria of the NERC Continuing Education Program."

- Continuation Education Program Provider -- this definition, which is used in ROP §600, is revised to reflect the deletion of Appendix 6 and the movement of its substantive provisions to ROP §600.

- Credential Maintenance – this definition is deleted because, as the result of the elimination of Appendix 6, it is no longer needed.

- Director of Compliance – this definition is revised. See the discussion in §III.F.1.a below relating to Appendix 4C.

- Evidentiary Hearing – this is a new defined term which is used in the Hearing Procedures. See the discussion in §III.F.3.a below relating to Attachment 2 (Hearing Procedures) to Appendix 4C.

- Exception Report – this definition, which is used in Appendix 4C, is revised. See the discussion in §III.F.1.a below relating to Appendix 4C.

- Hearing Body – this definition, which is used in §400 of the ROP and in Appendix 4C, is revised. See the discussion in §III.F.3.a below relating to Attachment 2 (Hearing Procedures) to Appendix 4C.

- ISO/RTO – this is a new definition that is used in new §5.11 of Appendix 4C. See the discussion in §III.F.1.e below relating to new §5.11 of Appendix 4C.

- Mitigating Activities – this is a new definition that is used in §400 of the ROP, in Appendix 4B and in Appendix 4C. See the discussion in §III.B.2 above relating to §401.11.3 and in §III.F.1.a below relating to Appendix 4C.

- Mitigation Plan – this definition, which is used in in §400 of the ROP and in Appendix 4C, is revised. See the discussion in §III.F.1.a below relating to Appendix 4C.

- Notice of Alleged Violation and Proposed Penalty or Sanction – the defined term "Notice of Alleged Violation" is revised, but its definition is not revised. See the discussion in §III.F.1.a below relating to Appendix 4C.

- Notice of Confirmed Violation – this definition, which is used in Appendix 4C, is revised. See the discussion in §III.F.1.a below relating to Appendix 4C.

- Notice of Penalty – this definition, which is used in §400 and §1506 of the ROP and in Appendix 4C, is revised. See the discussion in §III.F.1.a below relating to Appendix 4C.

- Participant – this definition, which is used in §400 of the ROP and in the Hearing Procedures, is revised. See the discussion in §III.F.3.a below relating to Attachment 2 (Hearing Procedures) to Appendix 4C.

- Possible Violation – this definition, which is used in §400 of the ROP and in Appendix 4C, is revised. See the discussion in §III.F.1.a below relating to Appendix 4C.

- Preliminary Screen – this definition, which is used in Appendix 4C, is revised. See the discussion in §III.F.1.a below relating to Appendix 4C.

- Probation – this definition, which is used in ROP §600, is revised to reflect the deletion of Appendix 6 and the movement of its substantive provisions to ROP §600.

- Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan or Regional Implementation Plan – this definition, which is used in §400 of the ROP and in Appendix 4C, is revised. See the discussion in §III.F.1.a below relating to Appendix 4C.

- Remedial Action Directive – this definition, which is used in §400 of the ROP and in Appendix 4C, is revised. See the discussion in §III.B.2 above relating to ROP §402.5 and in §III.F.1.a below relating to Appendix 4C.

- Revoke for Cause – this definition, which is used in ROP §600, is revised to reflect the deletion of Appendix 6 and the movement of its substantive provisions to ROP §600.

- Self-Certification – this definition, which is used in Appendix 4B and in Appendix 4C, is revised. See the discussion in §III.F.1.a below relating to Appendix 4C.

- Self-Report – this definition, which is used in Appendix 4B and in Appendix 4C, is revised. See the discussion in §III.F.1.a below relating to Appendix 4C.

- Spot Check – this definition, which is used in Appendix 4B and in Appendix 4C, is revised. See the discussion in §III.F.1.a below relating to Appendix 4C.

- Termination of Credential – this definition, which is used in ROP §600, is revised to reflect the deletion of Appendix 6 and the movement of its substantive provisions to ROP §600.

- Testimonial Hearing – this is a new defined term which is used in the Hearing Procedures. See the discussion in §III.F.3.a below relating to Attachment 2 (Hearing Procedures) to Appendix 4C.

- Type of CE Hours – this definition is deleted because it is no longer needed as the result of the elimination of Appendix 6.

D. Deletion of Appendix 3C, *Procedures for Coordinating Reliability Standards Approvals, Remands, and Directives*

NERC is deleting Appendix 3C as no longer necessary. Appendix 3C was originally developed in response to directives in P 286 of FERC's July 2006 ERO Certification Order, concerning coordination among the applicable North American regulatory bodies with authority over development and approval of Reliability Standards for the Bulk Power System, specifying that NERC should identify the relevant regulatory bodies and their respective standards approval and remand processes that will be implicated in any remand of a proposed Reliability Standard, and specify the actual steps to coordinate all of these processing requirements, including those that may be necessary for an expedited deadline to return a remanded proposed Reliability Standard.[12] As NERC has continued, subsequent to 2006, in its efforts to gain recognition as the ERO and adoption of mandatory Reliability Standards in the Canadian provinces and Mexico, the requirements and processes applicable to adoption and revision of Reliability Standards in the non-U.S. jurisdictions have been established by legislation or regulation with those jurisdictions or by memoranda of understanding between NERC and the Applicable Governmental Authorities. As the concerns underlying the directives in P 286 of the ERO Certification Order are now addressed through legislation, regulation, or memoranda of understanding in or with the non-U.S. Applicable Governmental Authorities, Appendix 3C no longer needs to be maintained, and can be deleted.[13]

[12] *North American Electric Reliability Corporation, Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing*, 116 FERC ¶ 61,062 (2006) ("ERO Certification Order").

[13] Additionally, Appendix 3C contains contact information for officials at relevant governmental bodies in the U.S. and Canada. Although NERC has not maintained the information up-to-date in the Appendix, revisions to the contact information would require revising Appendix 3C through the ROP amendment process, including a stakeholder comment period, NERC Board approval, and a filing with the applicable governmental authorities, none of which would be a good use of time and resources.

E. Revisions to Appendix 4B, *Sanction Guidelines*

The revisions to Appendix 4B are shown in legislative style in **Attachment 3B**. Two principal objectives of the revisions to Appendix 4B are (1) to eliminate text that does not relate to the purpose of the Sanction Guidelines, namely, how Penalties and sanctions for violations of Reliability Standards are determined, and (2) to eliminate internally duplicative or repetitive text. Consistent with these objectives, the following portions of Appendix 4B are being completely or substantially deleted, as well as portions of the texts of other sections:

- current §2, Document Scope and Exclusions (the entire section is unnecessary);[14]
- current §3.1, Necessary Elements of NERC Compliance Program (this text is also unnecessary in this Appendix; the Compliance Program is covered in ROP §400 and Appendix 4C; stakeholders should be able to review §400 and Appendix 4C to see the provisions of the Compliance Program without having to review Appendix 4B);
- current §3.2, Settlement of Compliance Violations, as well as the current sections captioned "Settlement Request" and "Settlement Effect on Continuation of Determination of Penalties, Sanctions, or Remedial Actions" (the settlement process is covered in §5.6 of Appendix 4C);
- current §3.7, "No Influence of Penalty, Sanction or Remedial Action Upon Violation Confirmation Process;" and
- current §6, "Remedial Action Directives" (this section is deleted in its entirety; Remedial Action Directives are covered in §7.0 of Appendix 4C, which is the appropriate Appendix for this topic, and do not need to be covered in Appendix 4B).

Additionally, text paraphrasing or referring to various statutory provisions, FERC regulations and orders has also been deleted, because (1) these authorities speak for themselves, and (2) the inclusion of quotations from or citations to specific regulations and orders can necessitate amending the Appendix from time to time as new orders are issued.[15] Such references that are being deleted are found in current sections 3.8, 3.20, 3.21, 4.3, 4.3.1, 4.3.3,

[14] Because §2 is deleted in its entirety, the current §3 is renumbered as §2, the current §4 is renumbered as §3, and the current §5 is renumbered as §4.

[15] For example, FERC from time to time issues additional guidance orders regarding enforcement policies and the determination of penalties and sanctions; if such an order supersedes, modifies or further clarifies statements in earlier orders that are quoted or cited in Appendix 4B, it would be necessary to implement the ROP amendment process to revise Appendix 4C to appropriately cite or reference the latest guidance order.

4.3.4, 4.3.5, 4.3.6, 4.3.7, 6.2 and 6.5 (as noted above, current §6 is being deleted in its entirety for another reason). However, a statement has been added in §1 that:

> NERC and the Regional Entities will apply the provisions of this document in accordance with applicable statutory provisions and with the regulations, orders, and statements of policy of FERC and other Applicable Governmental Authorities that are applicable to the determination and imposition of Penalties and sanctions for violations of Reliability Standards in the respective jurisdictions.

Revisions have also been made throughout Appendix 4B for more consistent use of terms within the document and as used elsewhere in the ROP, including defined terms, such as Possible Violation, Alleged Violation, and Registered Entity. Further, throughout Appendix 4B, revisions have been made for purposes of simplifying the text. The text of current Appendix 4B is extremely elaborate and the simplification of the text will make the document easier to use for all stakeholders. As part of the simplification effort, in numerous places the text has been revised from the form "X will occur" or "X will be taken into account," to the form "NERC and the Regional Entity will do X," in order to identify the entity or entities that will take the specified action.

The remainder of this §III.E discusses revisions to individual sections of Appendix 4B that have been revised for specific reasons other than (or in addition to) those described above.

As noted above, much of the text of existing §3.2 (renumbered §2.1) is being deleted. However, text is retained in this section specifying that the provisions in a settlement agreement regarding Penalties or sanctions can supersede any corresponding Penalties or sanctions that would otherwise be determined pursuant to the Sanction Guidelines.

In renumbered §2.5, Multiple Violations, text has been added to state that where Penalties or sanctions for several unrelated violations by a Registered Entity are being determined at the same time, NERC or the Regional Entity may determine and issue a single aggregate Penalty or sanction bearing a reasonable relationship to the aggregate of the violations. This revised text is consistent with long-standing practice.

Renumbered §2.8 is revised to state that in unique extenuating circumstances "causing or contributing to the violation," NERC or the Regional Entity may significantly reduce or eliminate Penalties.

Renumbered §2.10, "Economic Choice to Violate," has been revised to specify that "Economic choice includes economic gain for, or the avoidance of costs to, the violator;" and to make it clear that "NERC or the Regional Entity shall treat economic choice to violate as an aggravating factor when determining a Penalty."

In renumbered §3.2.2, which discusses how the fact that a violation is a Registered Entity's first violation of a Requirement will be considered in determining (reducing or excusing) the Base Penalty Amount, text has been added to provide that this relief generally will not be afforded if NERC or the Regional Entity determines the violator has a poor internal compliance program or there is other evidence of a poor culture of compliance (as well as of a poor compliance record, as stated in the existing text). The revised text is consistent both with longstanding practice, and with the increased emphasis NERC is placing in its compliance monitoring and enforcement activities on the Registered Entity's internal compliance program and culture of compliance.

In renumbered §3.3, which lists adjustment factors that will be considered in determining the Penalty after the Base Penalty Amount is established, revised subpart c lists as adjustment factors disclosure of the violation by the violator through self-reporting or as the result of a compliance self-analysis conducted by the Registered Entity following a Bulk Power System event, and voluntary Mitigating Activities (which is a broader term than the current term "corrective action") by the violator. In subpart d, "remedial action" has been replaced with the defined term "Mitigating Activities." Further, "settlement" has been added as an explicit adjustment factor, in subpart f of §3.3.

In renumbered §3.3.1, which discusses repetitive violations and the violator's compliance history as an adjustment factor in determining the Penalty, text has been added to state that in evaluating the violator's compliance history, NERC or the Regional Entity will take into account previous violations by affiliates of the violator, particularly violations of the same or similar Reliability Standard Requirements, and will evaluate whether any such prior violations reflect recurring conduct by affiliates that are operated by the same corporate entity or whose compliance activities are conducted by the same corporate entity. This addition is consistent with a 2010 guidance order from FERC,[16] and should also promote the sharing of compliance information and lessons learned between/among Registered Entities that are corporate affiliates. This factor is one of many factors identified in Appendix 4B that should be evaluated in determining the Penalty.

Also in renumbered §3.3.1, the term "violation reset time period" has been changed to "reset period or reset time frame," as these are the terms used in several Reliability Standards.

Renumbered §3.3.3, retitled "Disclosure of the Violation Through Self-Reporting and Voluntary Mitigating Activities by the Violator," has been revised consistent with subpart c of §3.3 as described above. In addition, the following text has been added to §3.3.3:

> If a Self-Report or a Self-Certification submitted by the violator accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check will not subject the violator to an escalated Penalty as a result of the Compliance Audit process unless the severity of the violation is found to be greater than reported by the violator in the Self-Report or Self-Certification.

[16] *North American Electric Reliability Corporation, Notice of No Further Review and Guidance Order*, 132 FERC ¶ 61,182 (2010), at P 7 (stating that in some circumstances a Registered Entity's violation can be considered a prior violation with respect to an affiliate's later-in-time violation, and that a Notice of Penalty should explain how NERC and the Regional Entity assessed whether the violation "may reflect recurring conduct by the same registered entity or by an affiliate or department that is operated by the same corporate entity or whose compliance activities may be conducted by that entity."

A similar statement is currently contained in §3.0 of Appendix 4C, but it is being moved to Appendix 4B as it more appropriately relates to Penalty determinations than to compliance monitoring processes.

In renumbered §3.3.4, retitled "Degree and Quality of Cooperation," "remedial action" has been replaced with the defined term "Mitigating Activities," consistent with the revision to subpart d of §3.3 as described above.

Renumbered §3.3.5, retitled "Presence and Quality of the Violator's Internal Compliance Program," has been revised to add reference to "other indicators of the violator's culture of compliance" as an adjustment factor.

New §3.3.6, "Settlement," has been added consistent with the addition of subpart f in §3.3 as described above, to include settlement as a mitigating factor in determining the Penalty: "NERC or the Regional Entity may consider a reduction in Penalty if the violator resolves the violation through settlement, taking into account the speed with which settlement was reached."

Renumbered §3.3.7, retitled "Violation Concealment and Responsiveness," has been revised to state that NERC or the Regional Entity shall consider a significant increase to the Penalty if NERC or the Regional Entity determines, based on its review of the facts, that the violator concealed or attempted to conceal the violation or information necessary to investigate the violation or resisted or impeded the discovery and review of a violation. The text has been revised to state that the presumption in a case where the violator concealed or attempted to conceal the violation is to double the Penalty, but also to state that NERC or the Regional Entity will determine the actual increase to the Penalty based on the particular facts and circumstances of the violation. (In other words, the presumption to double the Penalty is not controlling, and can be overcome or offset by other facts and circumstances in the particular case.)

Renumbered §3.3.8 has been revised to state that the presumption in a case where the violator committed an intentional violation is to double the Penalty otherwise suggested, but that

NERC or the Regional Entity will determine the actual increase to the Penalty based on the facts and circumstances of each case.

F. Revisions to Appendix 4C, *Compliance Monitoring and Enforcement Program*

The revisions to Appendix 4C, including the revisions to Attachments 1 and 2 to Appendix 4C, are shown in legislative style in **Attachment 4B** to this Petition.

1. Revisions to the Compliance Monitoring and Enforcement Program

Throughout Appendix 4C, the term "Regional Entity" has been changed to "Compliance Enforcement Authority" in numerous places. In addition, since some sections have been added and others deleted, many sections have been renumbered; as a result, there are revisions throughout Appendix 4C to change cross-references. In the discussion below, section number references are to the renumbered sections, unless otherwise indicated.

a. Section 1.0 – Introduction

In §1.1.2, Annual Audit Plan, the reference to "Compliance Audit Participant requirements" being included in the Annual Audit Plan has been deleted.

In §1.1.9, the definition of Confirmed Violation has been expanded to more comprehensively capture the circumstances that, based on experience, constitute a Confirmed Violation. A Confirmed Violation represents a state in which the enforcement process has been completed. The revised definition is:

> Confirmed Violation: An Alleged Violation for which (1) the Registered Entity has accepted or not contested the Notice of Alleged Violation and Proposed Penalty or Sanction or other notification of the Alleged Violation, or (2) there has been the issuance of a final order from NERC or a Regional Entity Hearing Body finding a violation, Penalty or sanction, or (3) the period for requesting a hearing or an appeal has expired, or (4) the Registered Entity has executed a settlement agreement pursuant to Section 5.6.

Some stakeholder comments expressed concern about including in the definition of "Confirmed Violation" settlement agreements in which the Registered Entity neither admits nor denies the Alleged Violation, and suggested that a separate defined term should be created to

cover such situations. However, NERC intends the term Confirmed Violation to encompass the end-state of the enforcement process for an Alleged Violation, whether that end state is reached by the Registered Entity accepting or not contesting the Alleged Violation, an actual determination by a Regional Entity Hearing Body or NERC that a violation occurred, the expiration of the time allowed for requesting a hearing or filing an appeal, or execution of a settlement agreement that resolves the Alleged Violation. Further, with respect to any concern that a Confirmed Violation is a determination of "guilt," and the potential impact of the existence of a Confirmed Violation for the Registered Entity on the enforcement process and potential Penalties for future Possible Violations or Alleged Violation, the settlement agreement and the Notice of Penalty for the Confirmed Violation will reflect that the Confirmed Violation was arrived at through a settlement agreement in which the Registered Entity neither admitted or denied the Alleged Violation.[17]

In §1.12, a new defined term, "ISO/RTO," has been added. This term is used in new §5.11, discussed in §III.F.1.e below.

In §1.13, a new defined term, "Mitigating Activities," has been added: "Actions taken by a Registered Entity to correct and prevent recurrence of a noncompliance, whether or not the actions are embodied in a Mitigation Plan." This defined term has been added because under some enforcement resolutions of a Possible Violation or Alleged Violation, the submission, acceptance and approval of a formal Mitigation Plan may not be required; however, the Registered Entity is required to implement Mitigating Activities for the noncompliance. In a number of places in ROP §400, Appendix 4B and Appendix 4C, the term "remedial action[s]" has been replaced by "Mitigating Activities."

[17] Additionally, FERC has previously cautioned that confusion may result from settlements of Alleged Violations that do not result in "Confirmed Violations." *North American Electric Reliability Corporation, Order Conditionally Approving Revised Pro Forma Delegation Agreement, Revised Delegation Agreements with Regional Entities, Amendments to Rules of Procedure and Certain Regional Entity Bylaws*, 133 FERC ¶ 61,061 (2010), at P 92.

In §1.1.14, Mitigation Plan, text not necessary to define the term is being deleted. The deleted text goes beyond defining the term (*i.e.*, stating what a Mitigation Plan is), to state when a Mitigation Plan is required.

In §1.1.17, the defined term Notice of Alleged Violation is changed to Notice of Alleged Violation and Proposed Penalty or Sanction, which is the term more commonly used by the Regional Entities. Notices of Alleged Violation typically include a proposed Penalty. However, the text of the definition is not changed.

In §1.1.19, Notice of Confirmed Violation, the definition is revised to delete text that is not necessary to define this term. The deleted text specifies when a noncompliance would become a Confirmed Violation. This information is more appropriately covered in the definition of "Confirmed Violation."

In §1.1.20, Notice of Penalty, the text is revised to add the phrase "a Notice or other notification of Confirmed Violation." This change reflects that Regional Entities may sometimes provide notice of a Confirmed Violation through a means of notification other than a Notice of Confirmed Violation.

In §1.1.23, Possible Violation, the phrase "using one of the compliance monitoring and enforcement processes in Section 3.0" is deleted. The deleted text is not necessary to define "Possible Violation," and, in addition, may not be accurate, since a Possible Violation may be identified through a means other than one of the compliance monitoring processes listed in §3.0 of Appendix 4C.

In §1.1.24, Preliminary Screen, an additional component is added to the determinations to be made in the Preliminary Screen: "if known, the potential noncompliance is not a duplicate of a Possible Violation or Alleged Violation which is currently being processed."

In §1.125, Regional Implementation Plan, the definition is revised to reflect that the Regional Implementation Plans for a year are now to be submitted to NERC by October 1 (rather than by November 1) of the preceding year.

In §1.1.27, Remedial Action Directive, the definition is revised to state that one of the requirements for issuance of a Remedial Action Directive is that the Remedial Action Directive "is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat." If the action or condition to which the Remedial Action Directive is directed is currently presenting a threat to the Bulk Power System, then it is an "actual threat."

In §1.1.29, Self-Certification, the definition is expanded to reflect that additional possible responses to a Self-Certification request will be allowed:

> Self-Certification: An attestation by a Registered Entity that it is compliant or non-compliant ~~of compliance or non-compliance~~ with a Reliability Standard Requirement that is the subject of the ~~for which~~ Self-Certification, or that it does not own Facilities that are subject to the Reliability Standard Requirement, or that the Reliability Standard Requirement is not applicable to the Registered Entity ~~is required by the Compliance Enforcement Authority and that is included for monitoring in the Regional Implementation Plan~~.

In §1.1.30, Self-Report, several revisions have been made. First, the defined term is changed from "Self-Reporting" to "Self-Report" (this change is made throughout Appendix 4C and elsewhere in the ROP where the term is used). Second, the definition is revised to provide that the Self-Report may state that the Registered Entity believes it has, or may have, violated a Reliability Standard. This revision will enable a Registered Entity to submit a Self-Report without first having to *conclude* that is has violated a Reliability Standard. However, this revision is *not* intended to ***require*** a Registered Entity to submit a Self-Report whenever it believes it may have, but is not certain, that it has violated a Reliability Standard. In other words, the revised text allows the Registered Entity to submit a report of an occurrence or omission to the CEA without stating conclusively that the Registered Entity has violated a Reliability Standard. The revised text is intended to encourage Self Reports. Third, the

provision specifying that the Self-Report should state the actions that have been taken or will be taken to resolve the violation is deleted, because this requirement could delay submission of a Self-Report while the Registered Entity determines what actions are to be taken. NERC prefers that the Self-Report be submitted promptly following discovery of the noncompliance.

In §1.1.31, Spot Check, the defined term is changed from "Spot Checking" to "Spot Check" (this change is made throughout Appendix 4C and elsewhere in the ROP where the term is used). Additionally, in the third basis stated in the definition on which a Spot Check may be initiated, the reference to "events, as described in the Reliability Standard" is deleted, resulting in this clause stating: "in response to operating problems or system events."

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

The second paragraph of §2.0 is revised to specify that a Registered Entity must inform NERC or the applicable Regional Entity promptly of changes to the Registered Entity's compliance information "including planned or completed changes in ownership of Bulk Power System Facilities, Registration status, address or other contact information, and name of designated compliance contact." Experience has indicated that NERC and the Regional Entities are not receiving timely notification of such information, which may affect Registration status, identification of the correct/current Registered Entity, or the ability to contact the Registered Entity.

In the final paragraph of §2.0, detailed text concerning restrictions on and procedures for disclosure of confidential compliance information to FERC and other Applicable Governmental Authorities has been deleted here (this text is also deleted from several other sections of Appendix 4C), and replaced with: "Any such provision of information to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure." The complete text of this provision will now appear in one just section of Appendix 4C (§8.0).

c. Section 3.0 – Compliance Monitoring Processes

In the title of §3.0, reference to "Enforcement" is deleted; and in the first sentence of the section, "assess and enforce" is deleted. Section 3.0 encompasses only compliance monitoring processes, while §5.0 encompasses enforcement processes.

Throughout §3.0, footnotes stating that a particular compliance process normally completes within a specified time period have been deleted; experience has shown that the time required to complete individual compliance processes has varied widely based on particular facts and circumstances.

Text has been added in the second paragraph to state that if a potential noncompliance is identified through one of the compliance monitoring processes described in §3.0 or through another means, the CEA will conduct a Preliminary Screen of the information in accordance with §3.8; and that if the Preliminary Screen results in an affirmative determination with respect to the Preliminary Screen criteria, a Possible Violation exists and the CEA will proceed in accordance with §5.0, Enforcement Actions.

In the third paragraph, text describing the enforcement actions that may be taken by the CEA is deleted, as this topic is covered in §5.0, not in §3.0.

Text is added in the fourth paragraph stating that the CEA has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting that copies be made of Documents, data and information and removing those copies from the Registered Entity's location in accordance with appropriate security procedures conforming to ROP §1500 and other safeguards as appropriate in the circumstances to maintain the confidential or other protected status of the Documents, data and information, such as information held by a governmental entity that is subject to an exemption from disclosure under the United States Freedom of Information Act, or a comparable state or provincial law, that would be lost if the information were placed into the public domain. In the fifth paragraph, the text is revised to state

that a Registered Entity that believes a request for Documents, data or information is unreasonable may request a written determination from the NERC general counsel (changed from the NERC "compliance program officer").

Section 3.1, Compliance Audits, is revised to state that Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards, and standards sanctioned by the Institute of Internal Auditors, are examples of professional auditing standards on which Compliance Audit processes for Compliance Audits in the U.S. should be based, not the only standards that can be used for this purpose.

In §3.1.1, Compliance Audit Process Steps, the following revisions are made:

- The first process step is revised to state that the Annual Audit Plan will be posted, rather than distributed to all Compliance Audit Participants. Additionally, the provision that prior to the Compliance Audit, the CEA informs the Registered Entity of the Reliability Standards to be evaluated, is deleted, as this provision is included in the second process step.

- The second process step is revised to provide that the CEA will notify the Registered Entity of the Compliance Audit and the Reliability Standards to be evaluated, 90 days (rather than 2 months) prior to commencement of a regularly scheduled Compliance Audit (thereby providing additional notice to the Registered Entity).

- The third process step is revised to specify that the required information requested by the CEA is to be provided by the Registered Entity by the Required Date.

- The fourth process step is revised to delete the statement that the Compliance Audit team will review the Registered Entity's submitted information "prior to performing the Compliance Audit." The submitted information may be reviewed before or during the on-site audit activities.

- Text stating that the Compliance Audit team "follows NERC Compliance Audit guidelines in the implementation of the Compliance Audit" is also deleted in the fourth process step, as this statement is applicable to all the process steps and should not be inferred to apply only to the fourth process step.

- The fifth process step is revised to state that the Compliance Audit report will be completed in accordance with §3.1.6, which addresses the form and contents of the audit report.

- A process step has been added providing that if the Compliance Audit team identifies evidence of a potential noncompliance, the CEA will conduct a Preliminary Screen in accordance with §3.8.

- Finally, process steps describing enforcement actions are deleted, since enforcement processes are covered in §5.0.

Section 3.1.2, Compliance Enforcement Authority Annual Audit Plan and Schedule, is revised to state that Registered Entities scheduled for Compliance Audits in a year will be notified by October 1 of the preceding year (rather than by January 1 of the year in which the audit is to be conducted). The provision that the CEA will notify the Registered Entity of the "methods and data requirements for Compliance Audits" is deleted. In addition, the text is revised to state that the CEA will give due consideration to schedule changes requested by a Registered Entity "for reasonable cause" (rather than "to avoid unnecessary burden"), which will allow a broader basis for justification of schedule change requests.

In §3.1.3, Frequency of Compliance Audits, the last sentence is deleted because the subject of objections to the composition of the Compliance Audit team is covered in §3.1.5.4. Additionally, text relating to unscheduled Compliance Audits is revised for greater clarity.

In §3.1.4.1, Reliability Standards, the current second sentence is deleted and the first sentence is revised to incorporate the contents of the deleted sentence.

In §3.1.4.2, Period Covered, the following revisions are made:

- The first sentence is revised to emphasize that the Registered Entity's data and information must show compliance with the Reliability Standards being audited for the entire period covered by the Compliance Audit.
- A new second sentence is added to state that the CEA will indicate the beginning and End Date of the audit period in its notice of the Compliance Audit.
- The third sentence is revised to state that the start of the audit period will be the End Date of the previous Compliance Audit (which may be a different date than the last day of the previous Compliance Audit).
- The existing second sentence, concerning modification of the audit period, is deleted and replaced with a more straightforward sentence ("The Compliance Enforcement Authority may modify the beginning date of the audit period for any given Reliability Standard requirement based on an intervening compliance monitoring process.").
- In the fourth sentence (a new sentence) and fifth sentence, text is added/revised to state that the End Date should be a specified date prior to the scheduled start of the Compliance Audit, such as the date of the notification of the Compliance Audit issued by the CEA or the date that is thirty days following the date of the notification. This

revision is being made in response to stakeholder comments that making the End Date the last day of the Compliance Audit made it difficult for the Registered Entity to compile and provide evidence of compliance for the entire audit period through the End Date.

- In conjunction with the revision just described, text is added (last sentence of this section) to specify that if the Compliance Audit team discovers a potential noncompliance occurring subsequent to the End Date, the potential noncompliance will be subject to a Preliminary Screen pursuant to §3.8 (which may then result in the potential noncompliance becoming a Possible Violation and being entered into the enforcement process).

In §3.1.4.3, Review of Mitigating Activities, the term "Mitigation Plan" is replaced with "Mitigating Activities." As described earlier, the new defined term "Mitigating Activities" is a broader term than "Mitigation Plan," reflecting that actions taken by a Registered Entity to correct and prevent recurrence of a noncompliance, while they are accepted by the CEA, are not always memorialized in a formal Mitigation Plan.

Section 3.1.5.1, Composition of Compliance Audit Teams, is revised to state that the Compliance Audit team shall be comprised of members who the CEA has determined to have the requisite knowledge, training, and skills to conduct the Compliance Audit. The second sentence is revised to clarify who may be included on Compliance Audit teams, in addition to staff of the Regional Entity: (i) contractors and industry subject matter experts, (ii) NERC staff members (which may include contractors to NERC), (iii) compliance staff members of other Regional Entities, and (iv) representatives of FERC and of other Applicable Governmental Entities that have reliability jurisdiction with respect to the Registered Entity.

In §3.1.5.2, Requirements for Compliance Audit team Members, the first bullet is revised to state that Compliance Audit team members must be free of conflicts of interests "in accordance with the Compliance Enforcement Authority policies." A stakeholder comment pointed out that the presence of conflicts of interest should be based on a set of stated policies. Additionally, the fourth bullet is revised to eliminate the requirement that the CEA provide to the Registered Entity copies of the confidentiality agreements or acknowledgements executed by the

Compliance Audit team members; instead, the CEA will provide confirmation to the Registered Entity that all Compliance Audit team members have executed confidentiality agreements or acknowledgements. Regional Entities felt that providing copies of all the signed confidentiality agreements of the Compliance Audit team members to the Registered Entity was unnecessary administrative paperwork.

Section 3.1.5.3, Compliance Audit Observers and Other Attendees, is revised to clarify the distinctions between Compliance Audit team members (described in §3.1.5.1), observes, and attendees. The first paragraph of the section is amended to specify that the following may participate as observers: NERC staff; other members of the Regional Entity's compliance staff; with the Regional Entity's permission, compliance staff members of other Regional Entities; and representatives of FERC and of other Applicable Governmental Entities that have reliability jurisdiction with respect to the Registered Entity. A sentence is also added for clarification, in response to stakeholder comments on one of the earlier posted versions, stating that any members of NERC staff, Regional Entity Compliance Staff, or Compliance Staffs of other Regional Entities, or representatives of FERC or other Applicable Governmental Authorities who are not Compliance Audit team members identified pursuant to §3.1.1, are observers. The second paragraph, which is not being revised, states who may be attendees at the Compliance Audit. A new third paragraph has been added to make it clear that "Compliance Audit observers and attendees are not Compliance Audit team members and do not participate in conducting the Compliance Audit or in making Compliance Audit findings and determinations."

In §3.1.5.4, Registered Entity Objections to Compliance Audit Team, revisions have been made to the third paragraph to further clarify that a Registered Entity may object to participation on the Compliance Audit team of *individual* NERC or FERC staff members on grounds such as conflicts of interest as specified in this section, but may not object *generally* to participation on the Compliance Audit team by NERC or FERC staff members. NERC (and numerous

stakeholders who commented on this topic) believe that while a Registered Entity should not be able to object to participation *generally* by NERC staff or FERC staff on a Compliance Audit team, a Registered Entity should be allowed to object to the inclusion of a *particular individual* NERC staff or FERC staff member on the audit team based on conflict of interest, bias or similar specific grounds (*e.g.*, the NERC staff member or FERC staff member is a former employee of the Registered Entity). Commenters believed that the existing text ("Nothing in Section 3.1 shall be read to limit the participation of NERC staff in the Compliance Audit or to limit the participation of FERC staff in a Compliance Audit of a Registered Entity, or involving a portion of the Bulk Power System, over which FERC has jurisdiction") could be read to prohibit even objections to participation by individual NERC staff or FERC staff members on the basis of specific conflict of interest or bias grounds applicable to the particular individual being objected to.

The provision in current §3.1.5.4 that "Nothing in Section 3.1 shall be read to limit the participation of NERC staff in the Compliance Audit or to limit the participation of FERC staff in a Compliance audit . . ." was included in response to previous FERC orders directing that there be no restraints placed on the number of NERC staff or FERC staff members who can participate in a Compliance Audit or on the specific Compliance Audit activities in which NERC staff or FERC staff members can participate.[18] NERC does not believe that these previous FERC directives were intended to deny a Registered Entity the right to object to participation in a Compliance Audit by an individual NERC staff member or FERC staff member on the same types of grounds that a Registered Entity can object to participation by a Regional Entity staff

[18] *See* ERO Certification Order at P 318; *Order Accepting ERO Compliance Filing, Accepting ERO/Regional Entity Delegation Agreements, and Accepting Regional Entity 2007 Business Plans*, 119 FERC ¶ 61,060 (2007) ("April 19, 2007 Order"), at P 69.

member, contractor or industry subject matter expert as a member of the Compliance Audit team.[19]

In §3.1.6, Compliance Audit Reports, the phrase "evidence of possible noncompliance" in the third line of the first paragraph is changed to "evidence of potential noncompliance" to avoid confusion between the term "possible noncompliance" and the defined term "Possible Violation." Also in the first paragraph, the phrase "other Mitigating Activities" (using the new defined term) is added after "Mitigation Plan," as not all actions taken by Registered Entities to correct a noncompliance and prevent recurrence are memorialized in formal Mitigation Plans. Additionally, the first paragraph is revised to provide that the Compliance Audit report will identify "if" any Confidential Information has been redacted, rather than "the nature" of any redacted Confidential Information. The first paragraph of §3.1.6 is also revised to state that the Compliance Audit report may also state areas of concern and recommendations identified by the Compliance Audit team (rather than specifying that any recommendations of the audit team be provided in a separate document). Based on experience, NERC believes it will be more effective and efficient, as well as administratively simpler, to include such concerns and recommendations emanating from the Compliance Audit in the audit report along with the formal audit findings. This will also facilitate tracking the concerns and recommendations and the Registered Entity's actions to address them. Experience has shown that including recommendations in a separate report from the audit report has made tracking the recommendations problematic.

In the second paragraph, of §3.1.6, the first sentence is revised to specify that the CEA will provide the final audit report to the Registered Entity on or before the date the report is provided to NERC. In the third paragraph, a sentence is added stating that NERC will not publicly post the final Compliance Audit report for at least five business days following receipt.

[19] Some commenters did propose that Appendix 4C should be revised to prohibit participation by FERC staff on Compliance Audit teams or Compliance Investigation teams. NERC rejected these proposals as being contrary to previous FERC directives.

These two revisions provide for the Registered Entity to have the final Compliance Audit report in hand a reasonable amount of time in advance of the public posting or the report. Also in the third paragraph, the third alternative condition that must be satisfied before the Compliance Audit report is released to the public is revised to "the Registered Entity executes a settlement agreement," with the existing reference to "admits to a violation" deleted (as it is covered in condition (ii)). Finally, in the second paragraph, text concerning the provision of non-public compliance information to FERC or to another Applicable Governmental Entity is deleted and replaced with a reference to §8.0, where the full text on this topic is provided (this is the same change that has been made to §2.0, as described above).

In §3.2, Self-Certification, the second paragraph of the section is deleted because its substance has been moved to Appendix 4B, *Sanction Guidelines*, where it is more appropriately placed.

In §3.2.1, Self-Certification Process Steps, the following revisions are made:

- The first process step is revised to specify that the posted reporting schedule should include the applicable reporting periods.
- The first process step is also revised to specify that NERC, along with the CEA, will be responsible to ensure that the appropriate Reliability Standards, compliance procedures and required submittal forms are maintained and available (which may be through a means other than electronic).
- The third process step is revised, consistent with the revised definition of Self-Certification (§1.1.29), to list the four possible responses in a Self-Certification.
- The fourth process step is revised, consistent with the two additional possible responses (per the amended definition) to a Self-Certification request, to specify that, at a minimum, the CEA will review Self-Certifications of non-compliance and Self-Certifications stating that the Registered Entity does not own Facilities that are subject to the Reliability Standard Requirement or that the Requirement is not applicable to the Registered Entity.
- The fifth process step is revised to state that if the CEA identifies a potential noncompliance, the CEA conducts a Preliminary Screen.
- Finally, a paragraph is added to §3.2.1 stating that receipt of a Self-Certification by the CEA shall not be construed as a finding by the CEA that the Registered Entity is compliant with, not compliant with, subject to, or not subject to, the Reliability Standard requirement. This additional text, which was revised in response to a

stakeholder comment during one of the posting periods, is intended to negate the assumption that if a CEA makes no further response to a Registered Entity concerning a Self-Certification, the CEA has determined that the Registered Entity is compliant with the Reliability Standard Requirement.

Section 3.3, Spot Check, is revised to state that a Spot Check "may be initiated at the discretion of the Compliance Enforcement Authority or as directed by NERC. . . ." Additionally, the last two sentences of this paragraph are deleted because they describe specific process steps and therefore do not belong in this initial paragraph.

In §3.3.1, Spot Check Process Steps, the following revisions are made:

- The first process step is revised to state that a "notification letter" will be issued by the CEA to the Registered Entity, which will include the scope of the Spot Check including the Reliability Standard Requirements that will be covered.

- The second process step is revised to state that the notification package will include the names and employment histories of the persons who will perform the Spot Check.

- The second process step is also revised to state that the CEA shall provide confirmation to the Registered Entity that the Spot Check team members have executed confidentiality agreements or acknowledgements (this is similar to the process step revision made for Compliance Audits, as described above).

- The second process step is additionally revised to state that the Registered Entity may object to inclusion of any individual on the Spot Check team on the grounds specified in §3.1.5.4, but that nothing in §3.1 shall be read to limit the participation generally of NERC staff on a Spot Check team or to limit the participation generally of Commission staff in a Spot Check of a Registered Entity, or involving a portion of the Bulk Power System, over which FERC has jurisdiction. This revision is being made for the same reason as the revision to the process step for Compliance Audits in §3.1.5.4, as described above.

- The fourth process step is revised to specify that the Registered Entity must provide the required information to the CEA by the Required Date specified in the request.

- The fifth process step is revised to specify that the Spot Check team (rather than the Compliance Enforcement Authority) conducts a review of the information submitted to determine compliance.

- A new sixth process step is added to state that if the Spot Check team's review of the information submitted indicates a potential noncompliance, the CEA will conduct a Preliminary Screen.

- The seventh process step is revised to state that the Spot Check team will prepare a draft Spot Check report and the Registered Entity will be given ten business days to comment on it.

- The eighth process step is revised to provide that the Spot Check team will consider any corrections based on the Registered Entity's comments, finalize the Spot Check report and provide it to the Registered Entity and to NERC.

- In the ninth process step, text concerning the provision of non-public compliance information to the Commission or to another Applicable Governmental Entity is deleted and replaced with a reference to §8.0, where the full text on this topic is provided (this is the same revision that has been made to §2.0, as described above).

- Finally, the process step stating that if the CEA determines, after conducting a Preliminary Screen, that there is a Possible Violation, it will send the Registered Entity a Notice of Possible Violation, is deleted; that step will now be covered in §5.0, Enforcement Actions.

In §3.4, Compliance Investigations, the defined term "Possible Violation" is replaced by "potential noncompliance," as the ability to initiate a Compliance Investigation is not intended to be limited to situations in which a Possible Violation has been identified, but rather at an earlier stage at which evidence of a potential noncompliance has been identified.

In §3.4.1, Compliance Investigation Process Steps, the following revisions are made:

- The first process step is revised to provide that the CEA will take certain actions within three (rather than within two) business days of the decision to initiate a Compliance Investigation. It was determined that a small amount of additional time needed to be provided to complete the actions described in this step.

- The first process step is revised to delete the provision that the CEA, where appropriate, notifies the Registered Entity of the reasons for the Compliance Investigation, since (as stated in this process step), the Compliance Investigation may be expanded beyond its initial scope after it is initiated.

- The second process step is revised to specify that NERC will assign a staff member to act "as an observer or [Compliance Investigation] team member," as well as serve as a single point of contact, and will notify the Registered Entity as to whether the NERC staff member is acting as an observer or as a team member.

- The second process step is also revised to provide that within three (rather than two) business days after receiving notice of the decision to initiate a Compliance Investigation, NERC will notify FERC and other Applicable Governmental Authorities (*i.e.*, addition of one business day to the notification period as in the first process step).

- Text concerning the provision of non-public compliance information to FERC or to another Applicable Governmental Entity is deleted and replaced with a reference to Section 8.0, where the full text is provided (this is the same change that has been made in §2.0, as described above).

- Similar to revisions to the process steps for other compliance monitoring processes, as described above (see discussion of §3.1.5.4), text is added to the fourth process step in §3.4.1 to clarify that the Registered Entity may object to participation on the Compliance Investigation team by individual staff members of NERC, the Commission or another Applicable Governmental Authority, but may not object generally to participation in the Compliance Investigation by the staffs of NERC, the Commission, or other Applicable Governmental Authorities having reliability jurisdiction over the Registered Entity.

- The fifth process step is revised to provide that the Registered Entity must provide any required information to the CEA by the Required Date as specified in the request, and to add a reference that the steps in the Process for Non-submittal of Requested Data, in Attachment 1 of Appendix 4C, may be initiated.

- The ninth process step is revised to provide that the CEA may review any Mitigating Activities (in addition to Mitigation Plans), since not all actions taken by a Registered Entity to correct a noncompliance and prevent recurrence are memorialized in a formal Mitigation Plan.

- The tenth process step is revised to provide that if the CEA identifies a potential noncompliance, it will conduct a Preliminary Screen.

- In the eleventh process step, text concerning the provision of non-public compliance information to FERC or to another Applicable Governmental Entity is deleted and replaced with a reference to §8.0, where the full text is provided (again, this is the same change that has been made in §2.0, as described above).

In §3.5, Self-Reports, the first sentence is revised to state that Self-Reports are encouraged at the time a Registered Entity becomes aware that is has or may have violated a Reliability Standard. This revision is consistent with revisions to the definition of Self-Report in §1.1.30, discussed above. Additionally, a sentence is added stating that if possible, and without delaying the Self-Report, a Self-Report may include the actions that have been taken or will be taken to resolve the violation. This addition is also consistent with the change to the definition of Self Report (§1.1.30), discussed above.

In §3.5.1, Self-Report Process Steps, the first process step is revised to delete the reference to the CEA's website; the CEA may make the Self-Report submittal forms available through other means. The process step stating that the CEA will notify the Registered Entity that the CEA has completed its evaluation of the Self-Report is eliminated, as it is unnecessary in the

context of a Self-Report (in contrast to other compliance monitoring processes).[20] The fourth process step is revised to provide that the CEA will conduct a Preliminary Screen of the Self-Report information.

In §3.6.1, Periodic Data Submittal Process Steps, the following revisions are made:

- The first process step is revised to delete reference to the CEA's website; the CEA may make the submittal forms available through other means.
- The third process step is revised to provide that the Registered Entity must provide any required information to the CEA by the Required Date as specified in the request.
- The fifth process step is revised to provide that if the CEA's review of the data submittal indicates a potential noncompliance, the CEA will perform a Preliminary Screen.
- A paragraph is added at the end of §3.6.1 stating that receipt of a Periodic Data Submittal by the CEA shall not be construed as a finding by the CEA that the Registered Entity is compliant with, not compliant with, subject to, or not subject to, the Reliability Standard Requirement. This additional text is intended to negate the assumption that if a CEA makes no further response to a Registered Entity concerning a Periodic Data Submittal, the CEA has determined that the Registered Entity is compliant with the Reliability Standard Requirement. (A similar revision has been made to the Self Certification process steps, as described above.)

Current §3.7, Exception Reporting, is being deleted. Exception Reporting will no longer be considered one of the compliance reporting processes, as Exception Reports are triggered by Requirements of particular Reliability Standards, and not on the initiative of the CEA. However, as provided in revised §2.0, an Exception Report containing evidence of a potential noncompliance may still result in performance of a Preliminary Screen and initiation of the enforcement process.

In renumbered §3.7 (formerly §3.8), Complaints, text in the first paragraph stating that NERC will review any Complaint "that is related to a Regional Entity or its affiliates, divisions, committees or subordinate structures" is deleted. Regional Entities as such are not subject to

[20] If the CEA concludes, after conducting a Preliminary Screen of the Self-Report in accordance with §3.8, that a Possible Violation exists, the CEA will issue a Notice of Possible Violation to the Registered Entity in accordance with §5.1.

Reliability Standards; and for those Regional Entities that perform registered functions[21], there are agreements in place by which other Regional Entities, not NERC, perform the CEA responsibilities with respect to those registered functions.

Section 3.8, Preliminary Screen, is a new section in §3.0. The provisions relating to performance of Preliminary Screens have been relocated to §3.8 from §5.1, as the Preliminary Screen is considered a step in the compliance monitoring process (§3.0), rather than in the compliance enforcement process (§5.0). Section 3.8 states that the Preliminary Screen will be conducted within five business days after the CEA identifies the potential noncompliance, except that (i) if the CEA identifies the potential noncompliance during a Compliance Audit, the Preliminary Screen will be conducted immediately following the exit briefing of the Registered Entity, and (ii) if the CEA identifies the potential noncompliance during a Compliance Investigation, the Preliminary Screen shall be conducted immediately after the Registered Entity is first notified of the potential noncompliance identified by the Compliance Investigation. The two exceptions are necessary so that the Registered Entity does not receive a Notice of Possible Violation before being notified that the Compliance Audit or Compliance Investigation has found a potential noncompliance. Additionally, consistent with the revision to the definition of Preliminary Screen in §1.1.24 (discussed above), §3.8 specifies that the Preliminary Screen will include a determination of whether, if known, the potential noncompliance is not a duplication of a Possible Violation or Alleged Violation that is currently being processed. Finally, §3.8 provides that if the Preliminary Screen results in an affirmative determination with respect to the three criteria, a Possible Violation exists and the CEA shall proceed in accordance with §5.0.

d. Section 4.0 – Annual Implementation Plans

Section 4.1, NERC Compliance Monitoring and Enforcement Program Implementation Plans, is revised to provide that the NERC Implementation Plan will be provided to the Regional

[21] Currently Florida Reliability Coordinating Council, Southwest Power Pool and Western Electricity Coordinating Council.

Entities by on or about September 1 (rather than October 1) of the prior year. The section is also revised to state that NERC may update and revise its Implementation Plan during the course of the year, and that Regional Entities have discretion to make modifications to the NERC Implementation Plan with respect to individual Registered Entities.

Section 4.2, Regional Entity Implementation Plan, is revised, consistent with the revised schedule in §4.1, to provide that the Regional Implementation Plans will be submitted on or about October 1 (rather than November 1) of the previous year. Additionally, and similarly to the revisions to §4.1, this section is revised to state that a Regional Entity may update and revise its Implementation Plan during the year as necessary, with NERC approval or as directed by NERC, and that Regional Entities have discretion to make modifications to their Implementation Plans with respect to individual Registered Entities.

e. Section 5.0 – Enforcement Actions

In the first paragraph of §5.0, "remedial actions" is replaced with the new defined term "Mitigating Activities" to avoid confusion with the defined term Remedial Action Directive.

A statement is added in §5.0 that the imposition and acceptance of Penalties and sanctions shall not be considered an acceptable alternative to a Registered Entity's continuing obligations to comply with Reliability Standards.

Text is also added to §5.0 to specify that the CEA has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting that copies be made of Documents, data and information and removing those copies from the Registered Entity's location in accordance with appropriate security procedures conforming to ROP Section 1500 and other safeguards as appropriate in the circumstances to maintain the confidential or other protected status of the Documents, data and information, such as information held by a governmental entity that is subject to an exemption from disclosure under the United States Freedom of Information Act, or a comparable state or provincial law, that would be lost if the

information were placed into the public domain. Additionally, this section is revised to state that a Registered Entity that believes a request for Documents, data or information is unreasonable may request a written determination from the NERC general counsel (changed from the NERC "compliance program officer"). Further, a statement is added that if Documents, data or information requested from a Registered Entity in connection with an enforcement process are not received by the Required Date, the CEA may initiate the steps described in the Process for Non-submittal of Requested Data in Attachment 1 to Appendix 4A (discussed in §III.F.2 below).

Finally, text is added to §5.0 specifying that that under the circumstances presented by some Possible Violations, Alleged Violations or Confirmed Violations, absolute adherence to the enforcement process in §5.0, to the exclusion of other approaches, may not be the most appropriate, efficient or desirable means by which to achieve the overall objectives of the Compliance Program for NERC, the CEA and the Registered Entity; and that in such circumstances, other approaches may be considered and employed, but the Registered Entity is entitled to object to the use of any such other approach. A similar statement is found in current Appendix 4B, *Sanction Guidelines*, but it is being deleted there, as the statement relates to compliance enforcement processes and therefore is more appropriately placed in Appendix 4C.

Current §5.1, Preliminary Screen, is deleted, as this subject matter is being moved to §3.8 (described above).

New (renumbered) §5.1, Notice of Possible Violation, is revised to state that the Notice of Possible Violation will state the dates involved in the Possible Violation "if known." Section 5.1 is also revised to state that the CEA will report the Possible Violation to NERC (rather than specifying that it will be entered into the compliance reporting and tracking system; it is not necessary to specify the particular reporting mechanism to be used). Finally, §5.1 is revised to state that NERC will report the Possible Violation to other Applicable Governmental Authorities,

as applicable (in addition to or instead of FERC), in accordance with §8.0, Reporting and Disclosure.

Section 5.3, Notification to Registered Entity of Alleged Violation, is revised to provide that the CEA will notify the Registered Entity of the determination of an Alleged Violation, by issuance of a Notice of Alleged Violation and Proposed Penalty or Sanction or similar notification, even if the CEA and the Registered Entity have entered into settlement negotiations. This section is also revised to state that the CEA will issue a Notice of Alleged Violation and Proposed Penalty or Sanction "or similar notification," to recognize that some Regional Entities' processes may involve providing notification through a different means than a Notice of Alleged Violation and Proposed Penalty or Sanction. Similar revisions are made in other sections. Section 5.3 is also revised to state that the notification of Alleged Violation will be issued by e-mail and will be effective as of the date of the electronic mail message. This provision will promote consistency in the methods of delivering notification. Additionally, the requirements that the notification be signed by an officer or designee of the CEA, and be sent to the CEO of the Registered Entity, are deleted; the notification will be sent to the Registered Entity's compliance contact. Further, §5.3 is revised to state that the CEA will report the Alleged Violation to NERC (rather than specifying that it must be entered into the compliance reporting and tracking system – it is not necessary to specify the particular reporting mechanism to be used).

In item (v) of the list of contents of a notification of Alleged Violation in §5.3, "or other Mitigating Activities" is added after "implement a Mitigation Plan," to reflect that some actions taken by Registered Entities to correct and prevent recurrence of a noncompliance, although they are approved by the CEA, are not memorialized in a formal Mitigation Plan. In item (vii) of the list of contents of a notification of Alleged Violation, "full hearing procedure" is changed to

"general hearing procedure," consistent with a revision in Attachment 2, Hearing Procedures (described in §III.F.3, below).

Text is deleted from §5.3 concerning the provision of non-public compliance information to FERC or another Applicable Governmental Entity, and is replaced with a reference to §8.0, where the full text is provided (this is the same change as was made to §2.0, as described above). Finally, the last paragraph of this section is deleted, as completion of the enforcement action and issuance of a Notice of Confirmed Violation is covered in later sections.

In §5.4, Registered Entity Response, the following revisions are made:

- The first paragraph is revised to add agreement by the Registered Entity with the notification of Alleged Violation as establishing acceptance of the CEA's determination of violation and Penalty or sanction.
- The first paragraph is also revised to state that the CEA will issue a Notice of Confirmed Violation "or similar notification," to recognize that some Registered Entities' processes may involve providing notification through a different means than a Notice of Confirmed Violation. Similar revisions are made in other sections.
- The first paragraph is also revised to provide that the 30 day period for the Registered Entity to respond to the notification of Alleged Violation runs from the date of notification of Alleged Violation by electronic mail (consistent with a revision to §5.3, as described above).
- Additionally (and again, similar to revisions to other sections), the first paragraph is revised to state that the CEA will report the Confirmed Violation to NERC (rather than specifying that the report must be entered into the compliance reporting and tracking system – it is not necessary to specify the particular reporting mechanism to be used).
- Further, the first paragraph is revised to state that the Registered Entity will be allowed to provide a written explanatory statement to accompany the filing with the Commission and public posting of the Confirmed Violation.
- The second paragraph is revised to specify that if the Registered Entity wishes to contest the Alleged Violation or proposed Penalty or sanction, it must submit a response within 30 days following the date of notification of the Alleged Violation.
- At the end of the second paragraph, a reference to issuing a Notice of Confirmed Violation by the CEA is deleted, as this topic is covered in a subsequent section.
- In the third paragraph of §5.4, the reference to initiation of the hearing process (if requested) is shortened to simply refer to Attachment 2, Hearing Procedures.

In §5.6, Settlement Process, the following revisions are made:

- The first paragraph is revised to provide that the Registered Entity or the CEA may terminate settlement negotiations at any time. Either party should have discretion to terminate settlement negotiations if they are not progressing in a productive manner.

- The first paragraph is also revised to specify that when the CEA has agreed to engage in settlement negotiations, the running of the time period specified in §5.4 for the Registered Entity to respond to the notification of Alleged Violation pursuant to §5.4 is suspended until settlement negotiations are concluded or terminate. This provision is being revised based on stakeholder comments that the current text is unclear as to what obligation of the Registered Entity is suspended and for how long.

- The third paragraph is revised to state that the CEA and the Registered Entity will execute a settlement agreement (rather than that the CEA will issue a letter) setting forth the final settlement terms.

- The fourth paragraph is revised to state that within five business days after NERC advises the CEA of NERC's approval, rejection or proposed revisions to a settlement agreement, the CEA will notify the Registered Entity. Notification to the Registered Entity should come from the CEA, not from NERC which has not been in negotiation or other contact with the Registered Entity.

- In the fifth paragraph, text concerning the provision of non-public compliance information to FERC or another Applicable Governmental Entity is deleted and replaced with a reference to §8.0, where the full text is provided (this is the same change as has been made to §2.0, as described above).

- Text is added in the fifth paragraph to clarify that in the public posting of the settlement agreement or of the terms of the settlement, any Critical Energy Infrastructure Information or Confidential Information will be redacted.

Section 5.7, NERC Appeal Process, is revised to provide that the CEA, as well as the Regional Entity, may appeal the decision of the Regional Entity Hearing Body, in accordance with amended ROP §409 (discussed in §III.B.2 above).

Section 5.8, Notification of a Confirmed Violation, is revised to add the words "or other notification" to "Notice of Confirmed Violation," consistent with similar changes that have been made elsewhere in Appendix 4C. Section 5.8 is also revised to delete a reference to NERC receiving notification of the Confirmed Violation from the CEA "through the NERC compliance tracking and reporting system," consistent with other deletions of this reference that have been made in Appendix 4C.

Section 5.9, Notice of Penalty, is revised to provide that the Registered Entity shall be informed that the Notice of Penalty is pending public filing at least five business days prior to the

public filing and posting. This revision is intended to give the Registered Entity reasonable advance notice that the Notice of Penalty is about to be publicly posted. In addition, text concerning the provision of non-public compliance information to FERC or another Applicable Governmental Entity is deleted and replaced with a reference to §8.0, where the full text is provided (this is the same change as has been made to §2.0, as described above).

The title of §5.10 is changed from "Closure of Enforcement Action" to "Completion of Enforcement Action."

Section 5.11, Special Procedures for an Enforcement Action Against an ISO/RTO Where the Monetary Penalty May Be Allocated by the ISO/RTO to Other Entities, is a new section to establish procedures pursuant to which (1) an ISO/RTO (this is a new defined term, see §1.1.12 of Appendix 4C[22]) can request the CEA to make a determination, during the enforcement process for a Notice of Possible Violation issued to the ISO/RTO, that one or more specified other entities were responsible, in whole or in part, for actions or omissions that caused or contributed to the violation (if confirmed), and (2) the specified other entity(ies) can request and be allowed to participate in the enforcement process. Addition of §5.11 implements a framework that was initiated by a 2008 FERC Guidance Order on recovery of Penalty costs by ISO/RTOs from third parties[23] and furthered by subsequent FERC orders approving proposed tariff provisions of ISO/RTOs providing for the allocation to third parties of Penalties imposed on the RTO/ISO.[24] However, §5.11 expressly disclaims (in §5.11.4) that the CEA will determine whether and to what extent a Penalty imposed on the ISO/RTO for a Reliability Standard violation should be allocated to other entity(ies); under the framework established by FERC, that determination will

[22] ISO/RTO is defined as "An independent transmission system operator or regional transmission organization approved by the FERC or the Public Utility Commission of Texas."

[23] *Order Providing Guidance on Recovery of Reliability Penalty Costs by Regional Transmission Organizations and Independent System Operators*, 122 FERC ¶ 61,247 (2008)

[24] *See, e.g., Midwest Independent Transmission System Operator, Inc.*, 128 FERC ¶ 61,229 (2009); *New York Independent System Operator, Inc.*, 127 FERC ¶ 61,196 (2009); *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,260 (2008).

be made by FERC in a separate proceeding initiated by the ISO/RTO pursuant to §205. Section 5.11 has been substantially revised over the course of its development as the result of extensive discussions between NERC and the ISO/RTO Council as well as consideration of stakeholder comments on the versions of this provision posted during the comment periods.

Section 5.11.1, ISO/RTO's Request for Determination and Notice to Other Entities, specifies that in order to request the CEA to make a determination in an enforcement action that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to a violation (if confirmed) of a Reliability Standard for which the ISO/RTO has received a Notice of Possible Violation, the ISO/RTO shall, no later than ten business days after receiving the Notice of Possible Violation (or such additional period as the CEA may permit for good cause shown) (i) submit a written request to the CEA and (ii) issue a notice to the specified other entity(ies). Section 5.11.1 contains the content and delivery requirements for the ISO/RTO's request to the CEA and notice to the other entity(ies). The ISO/RTO's request must contain, among other information, a statement that the ISO/RTO has authority to allocate some or all of the monetary Penalty to the specified other entity(ies), including citations to any supporting tariffs, agreements, orders or governance documents; a brief explanation to show that the specified other entity(ies) are subject to the tariffs, agreements, orders and/or governance documents; and a brief statement of the factual basis on which the ISO/RTO contends in good faith that the specified other entity(ies) was responsible for actions or omissions that caused or contributed to the violation identified in the Notice of Possible Violation. The ISO/RTO's notice to the specified other entity(ies) must (in addition to providing specified other information), notify the other entity(ies) that the ISO/RTO has requested the CEA to determine that the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to a violation identified in a Notice of Possible Violation

issued to the ISO/RTO, and that the ISO/RTO intends to seek to allocate to the other entity(ies) all or part of any Penalty that is assessed to the ISO/RTO for the violation.

Section 5.11.2, Response of the Compliance Enforcement Authority and the Specified Other Entity(ies) to ISO/RTO's Request for Determination and Notice, states that if the ISO/RTO's written request for a determinations meets the requirements of §5.11.1, the CEA will contact the other entity(ies) to provide further information concerning their right to participate in the enforcement process for the Notice of Possible Violation. In order to participate in the enforcement process, the other entity(ies) will be required to submit a written request to participate and to execute a nondisclosure agreement. The specified other entity(ies) must request to participate in the enforcement process prior to, as applicable (i) the date of execution of a settlement agreement between the CEA and the ISO/RTO, and (ii) the date that the CEA issues a Notice of Confirmed Violation to the ISO/RTO. Upon receiving the specified other entity's written request to participate in the enforcement action and executed nondisclosure agreement, the CEA shall issue a notice to the ISO/RTO and to the specified other entity stating that the specified other entity is allowed to participate in the enforcement action. Upon receiving notice from the CEA that it is allowed to participate in the enforcement action, the specified other entity may participate in the enforcement process in the same manner as the ISO/RTO and shall be subject to all applicable requirements and deadlines specified in the Compliance Program.

Section 5.11.3, Compliance Enforcement Authority's Notices to NERC, provides for the CEA to provide NERC with copies of the ISO/RTO's request for a determination and notice to the specified other entity(ies), and with a copy of the CEA's notice that it will or will not make the determination requested by the ISO/RTO and allow the other entity(ies) to participate in the enforcement action.

Section 5.11.4, Compliance Enforcement Authority's Determination, provides that, assuming the requirements in §5.11.1 and §5.11.2 have been met, and if the enforcement action is not resolved by a settlement agreement stating whether or not the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation identified in the Notice of Possible Violation, the CEA shall make, and include in its proposed Notice of Penalty, its determination of whether or not the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation. However, §5.11.4 also states that the CEA's determination shall *only* address whether or not the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation, and shall not address whether all or a part of any monetary Penalty imposed on the ISO/RTO for the violation should be allocated or assigned to the specified other entity(ies). Section 5.11.4 further provides that the specified other entity(ies) shall be entitled to request a hearing on the CEA's determination, pursuant to §1.3.1 of Attachment 2 of Appendix 4C (Hearing Procedures), and to appeal the Hearing Body's decision pursuant to §1.7.10 of the Hearing Procedures, as though the specified other entity(ies) was a Registered Entity.

Section 5.11.5, Procedure Where ISO/RTO Members Are Allowed to Directly Assign Monetary Penalties for Violations of Reliability Standards to the ISO/RTO, provides that if an ISO/RTO's tariffs, agreement or other relevant governance documents establish procedures that allow members of the ISO/RTO to directly assign to the ISO/RTO monetary Penalties imposed on the ISO/RTO member(s) for violations of Reliability Standards, then the ISO/RTO members may follow the same requirements of §5.11.1 and §5.11.2 as are applicable to an ISO/RTO under those sections, and the ISO/RTO shall be afforded the same rights to participate in the enforcement action as a specified other entity under §5.11.1, §5.11.2 and §5.11.4, subject to the same requirements and conditions specified in those sections.

Section 5.11.6 specifies that the ISO/RTO shall be obligated and responsible to pay any monetary Penalty imposed by the CEA on the ISO/RTO for violation of a Reliability Standard, in accordance with §5.10 of Appendix 4C (which provides for issuance of an invoice and payment of any Penalty imposed for a Reliability Standard violation), (i) regardless of whether the CEA has made a determination that a specified other entity was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation, (ii) without regard to the timing of any separate proceeding(s) in which the ISO/RTO seeks to allocate some or all of the monetary Penalty to a specified other entity(ies), and (iii) without regard to whether or when the ISO/RTO receives payment from the specified other entity(ies). This provision obligates the ISO/RTO to pay any Penalty imposed on it for violation of a Reliability Standard within the time period specified in §5.10, without regard to whether or when the ISO/RTO has received payment from any other entity to which the ISO/RTO is seeking to allocate all or a portion of the Penalty.

f. Section 6.0 – Mitigation of Violations of Reliability Standards

In §6.0, text is added to state that the CEA has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting copies to be made of Documents, data and information and removing those copies from the Registered Entity's location in accordance with appropriate security procedures conforming to ROP §1500 and other safeguards as appropriate in the circumstances to maintain the confidential or other protected status of the Documents, data and information, such as information held by a governmental entity that is subject to an exemption from disclosure under the United States Freedom of Information Act, or a comparable state or provincial law, that would be lost if the information were placed into the public domain. This section is also revised to state that a Registered Entity that believes a request for Documents, data or information is unreasonable may request a written determination from the NERC general counsel (changed from the NERC "compliance program officer"). Finally, a sentence is added stating that if Documents, data, information or other

reports requested from a Registered Entity in connection with development of a Mitigation Plan or other Mitigating Activities are not received by the Required Date, the CEA may initiate the steps described in the Process for Non-submittal of Requested Data in Attachment 1 of Appendix 4C (described in §III.F.2 below).

Section 6.2, Contents of Mitigation Plans, is revised to eliminate the requirement that the representative of the Registered Entity who signs the Mitigation Plan shall be (if applicable) the person who signed the Self-Certification or Self-Report submittal. The Mitigation Plan must be signed by an officer, employee, attorney or other authorized representative of the Registered Entity.

In §6.3, Timetable for Completion of Mitigation Plans, detailed text concerning the timing by which a Mitigation Plan should be completed is deleted and replaced with "shall be completed in accordance with its terms." Additionally, the examples in the text of grounds on which the completion deadline may be extended are revised to include specific operational issues such as the ability to schedule an outage to complete Mitigating Activities and construction requirements that require longer to complete than originally anticipated.

Section 6.4, Submission of Mitigation Plans, is revised to provide that a Mitigation Plan may be reflected in a settlement agreement or Notice of Penalty (in addition to the option of being submitted as a separate document). The revised text is consistent with longstanding practice, *e.g.*, that the terms of the Mitigation Plan are often included in the settlement agreement rather than in a separate "Mitigation Plan" document.

Section 6.6, Completion/Confirmation of Implementation of Mitigation Plans, is revised to delete a provision that in verifying the Registered Entity's completion of a Mitigation Plan, the CEA may verify that the Registered Entity is in compliance with the Requirements of the Reliability Standard the noncompliance with which is addressed by the Mitigation Plan. The CEA will only be required to verify that all required actions in the Mitigation Plan have been

completed. This section is also revised to state that the Regional Entity will provide to NERC the quarterly status reports from Registered Entities on their progress in completing Mitigation Plans, "upon request by NERC" (rather than as a matter of course).

g. Section 7.0 – Remedial Action Directives

In §7.0, Remedial Action Directives, the following revisions are made:

- Consistent with the revision to the definition of Remedial Action Directive (§1.1.27), §7.0 is revised to state that a Remedial Action Directive is issued when the action is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat.
- The third paragraph is revised to remove the text stating that the CEA shall consult the Reliability Coordinator for the Registered Entity "if applicable, to ensure that the Remedial Action Directive is not in conflict with directives issued by the Reliability Coordinator," *i.e.*, the consultation will not be limited to this topic.
- The fourth paragraph is revised to expand the information to be included in a notice of Remedial Action Directive, including a statement of the requirements the CEA is imposing to remove the threat to reliability of the Bulk Power System and a schedule for specific periodic updates to the CEA on the Registered Entity's progress in achieving compliance.
- The fifth paragraph is revised to provide that the notice of the Remedial Action Directive that is delivered by electronic mail shall be sent to both the Registered Entity's CEO and its designated contact person for reliability matters; and that the notice will be deemed received on the earlier of the actual date of receipt of the electronic submission or receipt of the express courier delivery of the notice as specified by the courier service's verification of delivery.
- The sixth paragraph is revised to specify that the CEA will copy NERC on all correspondence sent to the Registered Entity.

h. Section 8.0 – Reporting and Disclosure

Section 8.0 is revised to contain two subsections. Section 8.1, Information to be Reported, lists the information to be provided by Regional Entities to NERC via electronic reports. A sentence is added stating that NERC will work with Regional Entities to specify form, content, timing and method of submitting reports and notices. The revised list of information to be reported includes the status of the review and assessment of all Possible Violations, Alleged Violations and Confirmed Violation; the potential impact of any Alleged Violation or Confirmed Violation on the reliability of the Bulk Power System; and the name of a Regional Entity staff

person knowledgeable about the information to serve as a point of contact, as well as other information specific in current §8.0.

Section 8.2, Reporting to Applicable Governmental Authorities and Public Disclosure, contains text concerning procedures for the disclosure of non-public U.S. compliance information to Applicable Governmental Authorities other than FERC, and disclosure of non-public non-U.S. compliance information to FERC, which is currently found in several sections of Appendix 4C, but has been removed from all the other sections. As described above with respect to the revisions to other sections from which this text is being deleted, it is replaced in those sections with a reference to §8.0. This section is also revised to state that NERC will publicly post on its web site each Notice of Penalty, with any Critical Energy Infrastructure Information or Confidential Information redacted (unless publication of the Critical Energy Infrastructure Information or Confidential Information has been determined to be permissible in accordance with ROP §1500), when NERC files the Notice of Penalty with FERC pursuant to §5.9.

i. Section 9.0 -- Data Retention and Confidentiality

There are no changes to §9.0 other than changes in capitalization of terms and changes in certain terms to be consistent with the changes to those terms elsewhere in Appendix 4C.

2. Revisions to Attachment 1, *Process for Non-Submittal of Requested Data*

In Attachment 1 to Appendix 4C, the process steps that the CEA will follow for non-submittal of data, information or reports that is requested or required in connection with a compliance monitoring or enforcement process, have been revised. The revised text begins with a reference to FERC's regulations at 18 C.F.R. §39.2(d) which provide that each user, owner or operator of the Bulk Power System within the U.S shall provide FERC, the ERO and the applicable Regional Entity such information as is necessary to implement §215 of the FPA as determined by FERC and set out in the rules of the ERO and each Regional Entity. The revised text more clearly sets forth the three steps (formerly stated as four steps) that will be followed,

including the additional notifications that will be issued and to whom they will be issued, if the Registered Entity fails to provide data, information or reports requested in a compliance monitoring or enforcement process by the Required Date. The existing provision stating that if the Registered Entity fails to produce the requested or required data, information or report in response to the successive notification steps set forth in Attachment 1, the CEA may issue a Notice or other notification of Alleged Violation and Proposed Penalty or Sanction at the Severe Violation Severity Level for the Reliability Standard Requirement to which the requested or required data, information or report relates, is retained.

Additionally, in response to stakeholder comments received during the posting periods, text has been added stating that upon a request from the Registered Entity submitted prior to the Required Date, stating in reasonable detail the basis for the Registered Entity's need for additional time, the CEA may afford the Registered Entity reasonable additional time to submit the data, information or reports, due to the scope or difficulty of the request or requirement for data, information or reports, the amount of the data, information or reports requested or required, or the form in which the data, information or other reports has been requested or is required to be provided. Further, a paragraph has been added to state that the process described in Attachment 1 is intended to be applied where a Registered Entity does not respond by the Required Date to an initial request for data, information or reports in connection with a compliance monitoring and enforcement process and does not respond to subsequent requests by the stated deadline; and that the process is not intended to apply where the Registered Entity responds, prior to the Required Date, to the initial request or requirement for data, information or reports with requests for clarification, definition of scope, or similar questions concerning the request or requirement for data, information or reports, or the Registered Entity requests, prior to the Required Date, additional time to respond based on the scope or difficulty of the request or requirement for data, information or reports, the amount or extent of the data, information or reports requested or

required, or the form in which the data, information or report is to be provided, and works with the CEA in good faith to respond to the request or requirement for data, information or reports, as modified if appropriate by the CEA based on questions raised by the Registered Entity. As evidenced by these added paragraphs, it is NERC's intent to give the Registered Entity every reasonable opportunity to avoid application of the process steps specified in Attachment 1.

3. Revisions to Attachment 2, *Hearing Procedures*

Throughout Appendix 2, (1) references to "[HEARING BODY]" (which were originally intended to allow each Regional Entity to insert the name of its Hearing Body) have been replaced with "Hearing Body;" and (2) references to provisions within Attachment 2 have been changed from "Paragraph" to "Section." Additionally, in numerous sections, the text has been divided into lettered subsections ((a), (b), (c), etc.).

a. Section 1.1 – Applicability, Definitions and Interpretation

In §1.1.1, Procedure Governed, subsection (b) is revised to provide that where the Hearing Body is comprised, in whole or in part, of industry stakeholders, the composition of the Hearing Body shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Body; and where the Hearing Body is comprised solely of independent members and an independent Hearing Officer, decisions shall require a majority vote. This revision is intended to accommodate NPCC's new Hearing Body composition which was recently approved by FERC.[25] Additionally, new subsection (d) has been added providing that if a final order has been entered by the Hearing Body, or the Hearing Body has issued a ruling determining that there are no issues to be decided regarding the Alleged Violation, proposed Penalty amount, proposed Mitigation Plan or proposed Remedial Action Directive, or the Registered Entity and the CEA have entered into a settlement agreement resolving the matters that are the subject of the hearing, the hearing shall be terminated by the

[25] *North American Electric Reliability Corporation*. Docket No. RR11-3-000, letter Order issued October 17, 2011.

Hearing Body and no further proceedings shall be conducted. This revision is intended to address uncertainties that arose in a previous hearing as to whether and when the Hearing Body could declare the proceedings concluded.

In §1.1.2, Deviation, a reference to the Hearing Officer "as defined in Paragraph [now Section] 1.1.5" has been deleted as unnecessary.

In §1.1.4, Interpretation, a new subsection (b) is added to provide that "Any ruling, order or decision of the Hearing Officer referenced in these Hearing Procedures shall be made by the Hearing Body where the composition of the Hearing Body consists of independent members and an independent Hearing Officer." This additional text is intended to accommodate NPCC's new Hearing Body composition which FERC has recently approved;[26] it avoids a situation in which the Hearing Officer, as a member of the Hearing Body, would be required to review his or her own decisions.

In §1.1.5, Definitions, several definitions are revised or added:

(1) The definition of "Clerk" is expanded to identify his/her duties ("perform administrative tasks relating to the conduct of hearings as described in these Hearing Procedures").

(2) The definition of "Director of Compliance" is expanded to include an individual designated by the CEA (regardless of title) who is responsible for management and direction of the Compliance Staff.

(3) Two new definitions are added, "Evidentiary Hearing" and "Testimonial Hearing." An Evidentiary Hearing is a hearing at which one or more Participants submit evidence for the record, while a Testimonial Hearing is an Evidentiary Hearing at which one or more witnesses appear in person to present testimony and be subject to cross-examination. (Corresponding revisions are made throughout the Hearing Procedures as necessary to identify references to hearings as "Evidentiary Hearing" or "Testimonial Hearing".)

(4) A definition of "Hearing Body" is added, consistent with the revision of this term from "[HEARING BODY]" as described above.

(5) The definition of "Participant" is revised consistent with the revisions to §1.2.12 (described below) that provide for the Hearing Body to be able to grant intervention into the hearing in specific, limited circumstances.

[26] *Id.*

b. Section 1.2 – General Provisions including Filing, Service, Transcription and Participation

In §1.2.1, Contents of Filing, a reference to "documents" in subsection (d) is changed to the broader term "evidence."

In § 1.2.3, Submission of Documents, the placeholder in subsection (a) for insertion of the CEA's regular business hours is deleted and replaced with "during the Compliance Enforcement Authority's regular business hours." In subsection (b), the placeholder for insertion of the CEA's time of close of business is deleted and replaced with "5:00 P.M." In subsection (e), the statement "The signature on a filing constitutes a certificate that the signer has read the filing and knows its contents, and that the contents are true to the best of the signer's knowledge and belief" is deleted, since this topic is now covered in new §1.2.15.

In §1.2.4, Service, the statement in subsection (a) that the Registered Entity's "designated agent for service" shall automatically be included on the service list is changed to "compliance contact." In subsection (b), a proviso "subject to the provisions of Section 1.5.10" is added. Section 1.5.10 is the section of the Hearing Procedures on Protective Orders. Subsection (c) is revised to state that the Clerk shall transmit a copy of the record to the ERO at the time the CEA transmits (rather than "serves") to the ERO a Notice of Penalty or a Hearing Body final order that includes a Notice of Penalty.

In §1.2.8, Transcripts, the text in subsection (a) is amended to provide that the court reporter shall file a copy of each transcript with the Clerk, and that upon receipt of a transcript from the court reporter, the Clerk shall send notice to the Participants stating that a transcript has been filed by the court reporter, the date or dates of the hearing that the transcript records, and the date the transcript was filed with the Clerk. This filing and notice will initiate the time period within which the Participants may file transcript corrections. In subsection (b), the time within which a Participant may file suggested transcript corrections is changed to within 14 days from the date of the Clerk's notice that the transcript has been filed with the Clerk. In addition,

subsection (b) is revised to provide that the Hearing Officer shall only allow changes that conform the transcript to "the statements being transcribed" (rather than suggesting that the testimony given could be revisited).

In §1.2.11, Participant Participation, the statement that witnesses shall personally appear at the Evidentiary Hearing if required by Paragraph 1.6.6 is deleted and replaced with "except as required by Section 1.6.6" (§1.6.6 addresses the requirements for witness attendance at Testimonial Hearings).

Section 1.2.12 is substantially revised and expanded to provide for the Hearing Body to allow intervention in Regional Entity Hearing Body proceedings under limited, specific circumstances. The title of §1.2.12 is changed to "Interventions" from "Interventions Are Not Permitted," reflecting that under the revised section, the Hearing Body will be authorized to allow intervention. Additionally, the section is revised as necessary throughout to reflect that the Hearing Body (as well as FERC) will be allowed to permit interventions. NERC recognizes that in previous orders, FERC concluded that only FERC would be authorized to allow intervention in NERC or Regional Entity hearings concerning compliance and imposition of Penalties.[27] However, NERC and the Regional Entities believe that it will improve the administration of hearings under the Hearing Procedures, and potentially avoid delays and interruptions to the proceedings while a potential intervenor prosecutes a request for intervention at FERC, if the Regional Entity Hearing Body is authorized to consider requests for intervention and to allow intervention in the limited, defined circumstances specified in proposed subsection 1.2.12(b).

New subsection (b) provides that the Hearing Body may allow a Person to intervene only if the Hearing Body determines that the Person seeking intervention has a direct and substantial interest in the outcome of the Alleged Violation, proposed Penalty or sanction, Mitigation Plan,

[27] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, 114 FERC ¶ 61,104 (2006) (Order No. 672), at P 511; April 19, 2007 Order at P 150.

or Remedial Action Directive that is the subject of the proceeding. Two examples of a "direct and substantial interest in the outcome" are provided in the text:

- that the Person seeking intervention has received a Notice of Alleged Violation or a Remedial Action Directive involving the same reliability Standards Requirements and arising out of the same event or occurrence as the existing Respondent(s) that is the subject of the proceeding;[28] or
- that the Person seeking intervention will or may be contractually or legally liable to the original Respondent(s) for payment of all or a portion of the proposed Penalty or sanction that is the subject of the proceeding.[29]

Two examples of situations that will not constitute "a direct and substantial interest in the outcome" and will not be grounds on which intervention may be allowed, are also provided in the text (including "seek[ing] to intervene to advocate an interpretation of the Reliability Standard Requirement(s) or provision(s) of the *Sanction Guidelines* that are at issue").

New subsections (c), (d) and (e) set forth the procedures and timing requirements for submission of a motion to intervene (including the required contents), responses by other Participants, issuance of a recommendation by the Hearing Officer, and the Hearing Body's decision on the motion to intervene. New subsection (f) authorizes (but does not require) the Hearing Officer or the Hearing Body to stay or suspend the proceedings while a request to intervene filed with the Hearing Body or with FERC, or any appeal of the ruling on the request to intervene, is being resolved. New subsection (g) provides that a Person allowed to intervene shall be deemed to be aligned with the Respondent(s), unless the Hearing Body specifies that the Person intervening shall be aligned with another Participant. New subsection (h) provides that a

[28] In the April 19, 2007 Order, FERC recognized this circumstance as one in which granting intervention could be appropriate. April 19, 2007 Order at P 150.

[29] FERC has allowed intervention in a Regional Entity Hearing Body hearing where the circumstances of the second example were present. *Monongahela Power Co., West Penn Power Co., The Potomac Edison Co., and PJM Interconnection,, L.L.C.*, 135 FERC ¶ 61,226 (2011). In that case, the original Respondent, PJM, had taken the positions that the entity that was seeking to intervene was responsible for the occurrences underlying the Alleged Violation. (Proposed new §5.11 of Appendix 5.11, described in §III.F.1e above, is being added to address these circumstances at the enforcement process level, but the "specified other entity(ies)" should also have a right to intervene in a Hearing Body proceeding if one is initiated by the ISO/RTO.) By allowing the Hearing Body to grant intervention in these circumstances, in which FERC has already indicated it will grant intervention, the need for the intervenor to file an intervention request with FERC, and the attendant potential delay to the Hearing Body proceeding, can be avoided.

Person allowed to intervene must take the record and procedural status of the proceeding as it stands on the date the motion to intervene is granted by the Hearing Body. This is a typical provision in administrative agency rules of procedure regarding interventions in the proceeding. Finally, new subsection (i) provides that appeals of decisions of the Hearing Body granting or denying requests to intervene may be appealed to NERC in accordance with ROP §414, and that the notice of appeal must be filed with the NERC director of enforcement no later than seven days following the date of the decision of the Hearing Body granting or denying the intervention.

Section 1.2.14, Docketing System, is revised to state that a docketed proceeding shall be created upon the filing of a request for hearing (rather than upon issuance of a Notice of Alleged Violation). Docketed hearing proceedings need to be created by the Regional Entity Hearing Body only when a request for a hearing on a matter is filed.

Section 1.2.15, Representation Deemed to be Made in All Pleadings, is a new section, that specifies that a Participant presenting any pleading to the Hearing Officer or Hearing Body shall be deemed to certify to the best of the Participant's knowledge, information and belief, formed after and based on an inquiry that is reasonable under the circumstances, certain specified matters as to the factual allegations in the pleading, the denials in the pleading of factual allegations made by another Participant, the claims, defenses and other contentions set forth in the pleading, and that the pleading is not being presented for any improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost incurred by any Participant.

c. Section 1.3 – Initiation of the Hearing Process

Section 1.3.1, Registered Entity's Option to Request a Hearing, has been divided into subsections. In subsection (d), concerning the notification in a Notice of Alleged Violation of the hearing options, a reference to §5.3 of the Compliance Monitoring and Enforcement Program is added. Subsection (e) sets forth the required contents of a Registered Entity's request for hearing, and provides that the Registered Entity may state two or more alternative grounds for its

position. Subsection (f) contains the provisions for determining if the general hearing procedure (referred to in the current Hearing Procedures as the "full" hearing procedures) or the shortened hearing procedure will be used, based on the Registered Entity's request and the response by the Compliance Staff and any other Participants (there are no substantive changes to this provision).

Section 1.3.2, Compliance Staff's Response to Request for Hearing, is a new section that specifies that the Compliance Staff must file a response to the request for hearing (i) if the request for hearing requests use of the shortened hearing procedure or (ii) the request for hearing requests that the Registered Entity's proposed revised Mitigation Plan be approved. In all other situations, the Compliance Staff may, but is not required to, file a response to the request for hearing. Any response by the Compliance Staff must be filed within 15 days after the date the request for hearing was filed, unless the Hearing Officer or Hearing Body allows a longer time.

Section 1.3.3, Notice of Hearing, is a new section specifying that the Clerk shall issue a notice of hearing not less than 16 days nor more than 21 days after the request for hearing is filed, stating whether the shortened hearing procedure or the general hearing procedure (referred to as the "full" hearing procedure in the current Attachment 2) will be used; and identifying the Hearing Officer and the date, time and place for the initial prehearing conference (which shall be set for seven days following the date of the notice if the shortened hearing procedure is to be used, and 14 days following the date of the notice if the general hearing procedure is to be used).

Section 1.3.4, Shortened Hearing Procedure, has a number of revisions to conform to terminology changes elsewhere in the revised Hearing Procedures; however, the following two revisions are substantive:

- The section is revised to require Compliance Staff to make Documents available to the Registered Entity for inspection and copying pursuant to §1.5.7 within ten days (rather than five days) after the issuance of the notice of hearing.
- The section is revised to state that it shall be the objective of the Hearing Body to issue its final order within 120 days (rather than 90 days) after the notice of hearing. Completing the hearing process within 90 days was viewed as unrealistic in light of

the various intermediate time periods for activities specified in the Hearing Procedures.

d. Section 1.4 – General Hearing Procedures

The text of §1.4.1, currently titled Notice of Hearing, which in the current Hearing Procedures covers issuance of the initial notice of hearing, is deleted (this topic will be covered in new §1.3.3), and the section is intentionally left blank to avoid the need to renumber all the following subsections in §1.4.

In §1.4.2, Hearing Officer, text is revised in subsection (a) to provide that the CEA shall (rather than may) utilize a Hearing Officer to preside over the hearing. A conforming change is made in subsection (c). Correspondingly, subsection (b) is revised to provide that the Hearing Officer is responsible (rather than may be delegated authority) for the conduct of the hearing. In subsection (b), the list of the Hearing Officer's responsibilities is modified to include to "hear argument on all objections, motions and other requests" (item (7)).

In §1.4.3, Hearing Body, the following revisions and additions are made:

- New subsection (a) provides that the composition of the Hearing Body, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision of the Hearing Body.
- Subsection (b) is revised to specify that upon receiving a filing by a Participant, the Clerk shall promptly send a notice to the members of the Hearing Body identifying the date of the filing and the Participant making the filing and briefly describing the nature of the filing, and that any member of the Hearing Body may request from the Clerk a copy of any filing made by a Participant.
- Subsection (b) is also revised to specify that the Clerk shall send all issuances of the Hearing Officer to the Hearing Body members.
- Text is added to subsection (b) to specify that at any prehearing conference or hearing attended by a member of the Hearing Body, the Hearing Body member may ask questions directly of any Participant or witness (i.e., the Hearing Body members will not be required to submit their questions to the Hearing Officer for him or her to pose the questions to the Participant(s) or witness(es)).

Section 1.4.4, Interlocutory Review, is revised to provide that a petition for interlocutory review shall be supported by either references to the record or by affidavit if based on facts that do not appear in the record.

In §1.4.5, Disqualification, the text in subsection (c) is revised to provide that where a replacement Hearing Officer is appointed after the hearing has commenced, the replacement Hearing Officer may recall any witness or "may take other steps necessary to ensure familiarity with the record." The text in subsection (d) is revised to provide that if there is not a quorum for the Hearing Body after recusals and disqualifications, the CEA shall appoint "at least the number" of new members to the Hearing Body necessary to create a quorum (rather than appointing "only . . . the number of new members who are necessary to create a quorum"). There is no reason to *limit* the CEA to appointing *only* the number of new members needed to create a quorum; the CEA should be allowed to make appointments to restore the Hearing Body to full strength if the CEA desires to do so.

In §1.4.7, No Ex Parte Communications, text is added to specify that the proscription against ex parte communications does not prohibit (i) communications between the Hearing Officer or members of the Hearing Body to the Clerk for the purpose of transmitting documents, giving instructions to the Clerk, or discussing scheduling or other procedural matters, or (ii) communications between or among the Clerk, the Hearing Body and representatives of the CEA for purposes of establishing the hearing forum. Additionally, in subsection (c), text is revised to require that a report of a prohibited communication shall be made by any member of the Hearing Body, the Hearing Officer or a Technical Advisor who receives or makes or knowingly allows (currently "knowingly causes to be made") a prohibited communication.

In §1.4.8, Appearances, text is added to specify that all representatives appearing before the Hearing Body or Hearing Officer shall conform to the standards of ethical conduct required of practitioners before the courts of the United States.

Section 1.4.10, Consolidation of Proceedings, is revised to provide that consolidation of proceedings pending before the Hearing Body may be considered on motion of a Participant (in addition to by the Hearing Body on its own motion). Additionally, references to "transaction"

are changed to "occurrence," as more descriptive of the types of events that might result in an Alleged Violation, proposed Penalty or proposed Mitigation Plan and ultimately result in a hearing before a Regional Entity Hearing Body.

e. Section 1.5 – Prehearing Procedure

Section 1.5.2, Prehearing Conferences, is revised to require the Hearing Officer to hold at least one prehearing conference. Further, several topics are added to the topics to be discussed at the prehearing conference, including the anticipated form of the hearing, the authenticity (rather than the "genuineness") of documents, the disclosure of witnesses and exhibits and whether the use of pre-filed testimony may not be appropriate, and a schedule or schedules for any anticipated motions. In addition, text is added to specify that the scheduled date for the Evidentiary Hearing shall be within 90 days of the initial prehearing conference, unless a different date is specified by the Hearing Officer or the Hearing Body with the consent of all Participants or for good cause shown. Finally, new subsection (b) requires the Hearing Officer to hold a final prehearing conference prior to the Evidentiary Hearing, to discuss specified topics and other topics suggested by the Participants. The topics for the final prehearing conference listed in §1.5.2(b) are the anticipated duration of the hearing, the scheduling of witnesses' appearances to testify, the issues anticipated to be presented at the hearing, whether prehearing memoranda should be filed and the schedule for such filings, and any other matters identified by the Hearing Officer for the management of the Evidentiary Hearing. Additionally, the Participants may submit to the Hearing Officer, at least ten days prior to the scheduled date of the final prehearing conference, a proposed list of matters to be discussed at the final prehearing conference. The changes to §1.5.2 are intended to improve the Hearing Officer's case management of the hearing process.

In §1.5.3, Summary Disposition, the basis for granting summary disposition is revised to state that summary disposition may be granted if there are no issues of material fact and a

Participant is entitled to issuance of a final order in its favor. In new subsection (b) more detailed requirements are added for the contents of a motion requesting summary disposition and the responses in opposition. In new subsection (c), a procedure is added by which the Hearing Officer, on his or her own motion, can initiate consideration of summary disposition or proceeding without an Evidentiary Hearing. The Hearing Officer is required to request the Participants to identify in writing any issues of material fact and to comment on the proposed summary disposition, with any factual information in the Participants' comments to be supported by affidavit.

In §1.5.4, Status Hearing, text is added to expand the reasons for a status hearing to include "other matters relevant to the conduct of the hearing." Text is also added to require that a Participant requesting a status hearing to resolve a dispute shall include in its request a certification that it has made a good faith effort to resolve the dispute with the other Participant(s) before requesting the status hearing.

In §1.5.5, Motions and Responses, text is revised in subsection (a) to specify that a Participant may file a motion at any time requesting appropriate relief "unless otherwise provided in these Hearing Procedures or by the procedural schedule established by the Hearing Officer or Hearing Body." Subsection (b) is revised to specify that the Hearing Body, as well as the Hearing Officer, may alter the schedule for filing responses and replies, deny dilatory, repetitive or frivolous motions, or decide to stay or extend the procedural schedule due to the filing or a motion.

In §1.5.7, Inspection and Copying of Documents in Possession of Staff, the following revisions are made:

- Subsection (a) is revised to specify that Staff is required to make Documents available for inspection and copying by other Participants (rather than by just the Respondent) within 25 days after the request for hearing is filed (rather than within 5 days after the notice of hearing is issued). Corresponding revisions of "Respondent" to "Participants" are made throughout this section.

- Revisions are made to tie the requirements for production of later-received Documents to the scheduled date of the Evidentiary Hearing (rather than "the hearing").

- In subsection (b), concerning Documents That May Be Withheld by Staff, the provision concerning privileged and work product Documents that may be withheld by Compliance Staff is revised to refer to Documents that are privileged to, or work product of counsel to, the CEA (rather than the Compliance Staff).

- Subsection (b) is also revised to provide that inspection reports, internal memoranda or other notes or writings prepared by Compliance Staff may be withheld if they will not be offered in evidence "or otherwise relied on by Staff in the hearing."

- The provision in subsection (b) concerning Documents that may be withheld by Compliance Staff because they would disclose an examination, investigatory or enforcement technique or guideline is revised to specify that the protected information must not otherwise be made public.

- Subsection (c) is revised to require that the Compliance Staff's list of withheld Documents must include a statement of the grounds that support withholding the Documents.

- Subsection (c) is also revised to specify that the Hearing Officer, for good cause shown, may order Compliance Staff to make available any withheld Document other than a Document that is subject to attorney-client privilege.

- Subsection (e) is revised to make it clear that a Participant may remove from the CEA's offices copies of the Documents made available by the CEA.

Section 1.5.8, Other Discovery Procedures, is revised to provide that the Hearing Officer, for good cause shown, may order a Participant to make a withheld Document available to other Participants, for inspection or copying. Additionally, the time period during which discovery should be completed is revised to 6 months following the date the request for hearing was filed (changed from 6 months from the date of the initial prehearing conference).

Section 1.5.9, Pre-Evidentiary Hearing Submission of Testimony and Evidence, is revised to clarify that all Participant witness direct testimony to be submitted in an Evidentiary Hearing must be prepared in written form, except for testimony to be elicited through adverse examination of a Participant, or unless the Hearing Officer otherwise orders.

Section 1.5.11, Pre-Evidentiary Hearing Memorandum, is revised to eliminate the need for the Hearing Officer or Hearing Body to have grounds for requesting submission of pre-

Evidentiary Hearing memoranda (*i.e.*, "due to the number or complexity of the issue(s)" is deleted). This section is also revised to provide that the topics directed to be included in the pre-Evidentiary Hearing Memoranda may include "such other matters as may be directed by the Hearing Officer or the Hearing Body." Further, §1.5.11 is revised to specify that the Hearing Officer may establish word (rather than page) limitations. The use of word limits rather than page limits is consistent with current practice in many courts and commissions.

Section 1.5.12, Certification of Questions to the NERC Board of Trustees, is a new section that provides for certification by the Hearing Body to the NERC Board of Trustees, for decision, a significant question of law, policy or procedure the resolution of which may be determinative of the issues in the proceeding in whole or in part and as to which there are extraordinary circumstances that make prompt consideration of the question by the Board of Trustees appropriate, pursuant to ROP §412 (discussed in §III.B.2 above). Section 1.5.12 specifies that questions of fact presented by the particular matter in dispute in a hearing shall not be the subject of a certification. The section provides the procedures for requesting certification of a question or considering whether a question should be certified. The Hearing Body shall determine whether any proposed question shall be certified to the NERC Board for decision. Subsection (e) specifies that in order to certify a question to the NERC Board for decision, the Hearing Body must determine that:

> the question is a significant question of law, policy or procedure the resolution of which may be determinative of the issues in the proceeding, in whole or in part, and that there are extraordinary circumstances that make prompt consideration of the question by the Board of Trustees appropriate.

The Hearing Body shall also determine whether or not the hearing should be stayed or suspended while a certified question is pending before the NERC Board.

f. Section 1.6 – Procedure at Evidentiary Hearing

Section 1.6.1, Purpose of Evidentiary Hearing, is revised to delete the provision that the evidentiary hearing also may be used to address any other issue pending between the Participants.

Section 1.6.6, Witness Attendance at Testimonial Hearing, is revised to specify that a person compelled to appear, voluntarily testifying, or making a statement may be accompanied, represented and advised by an attorney.

In §1.6.14, Cross-Examination, subsection (a) is revised to provide that leading questions are permitted on cross-examination. In subsection (b), text is added to state that the credibility of a witness may be attacked by any Participant, including the Participant calling the witness. Additionally, subsection (c) is revised to delete the requirement that if a member of the Hearing Body seeks to ask a witness questions, the Hearing Body member shall do so by submitting the questions in writing to the Hearing Officer to ask the witness (in other words, Hearing Body members can question witnesses directly).

Section 1.6.15, Redirect Examination, is revised to delete the requirement that if a member of the Hearing Body seeks to ask a witness questions, the Hearing Body member shall do so by submitting the questions in writing to the Hearing Officer to ask the witness (similar to the revision to §1.6.14).

Section 1.6.17, Close of the Evidentiary Record, is revised to state that the Hearing Officer may reopen the evidentiary record for good cause shown prior to issuance of the Hearing Body's final order. Additionally, a statement is added that for purposes of reopening the evidentiary record, newly discovered evidence that is material to the issues in dispute and could not, by due diligence, have been discovered prior to or during the Evidentiary Hearing, shall constitute good cause.

g. Section 1.7 – Post-Evidentiary Hearing Procedures

Section 1.7.1, Briefs, is revised to allow the Hearing Officer to allow oral closing statements in addition to (rather than only in lieu of) briefs, and to delete the requirement that there must be agreement of the Participants in order for the Hearing Officer to allow oral closing statements in addition to or in lieu of briefs. These revisions thereby leave it to the Hearing Officer's discretion as to whether or not to allow or request closing statements. Section 1.7.1 is also revised to allow the Hearing Officer to impose reasonable word limits (rather than page limits) on briefs. The use of word limits rather than page limits is consistent with current practice in many courts and agencies.

Section 1.7.4, Hearing Officer's Initial Opinion, is revised to eliminate the provision that if the initial opinion proposes a Penalty, the initial opinion shall include a proposed Notice of Penalty. Notices of Penalty are prepared by NERC. Corresponding revisions are made in other sections of the Hearing Procedures to delete references to Notices of Penalty prepared by the Hearing Officer or the Hearing Body.

Section 1.7.5, Exceptions, is revised to allow the Hearing Officer to impose reasonable word limits (rather than page limits) on briefs (similar to the revision to §1.7.1, discussed above).

Section 1.7.7, Additional Hearings, is revised to state that the Hearing Officer may reopen the record and hold additional hearings before issuance of the Hearing Body's final order (rather than before issuance of the Hearing Officer's initial opinion).

Section 1.7.8, Hearing Body Final Order, is revised to delete the provision that if the final order imposes a Penalty, it shall be entitled "Final Order and Notice of Penalty."

Section 1.7.10, Appeal, is revised to state that a Participant or a Regional Entity acting as the CEA may appeal a final order of the Hearing Body to NERC in accordance with NERC ROP §409 (discussed in §III.B.3 above). Additionally, the statement that the Clerk shall transmit the

record to NERC for any proceeding that has been appealed is deleted, as the procedures governing appeals are set forth in ROP §409.

h. Section 1.8 – Settlement

Consistent with revisions in §5.6 of Appendix 4C (discussed in §III.F.1 above), §1.8 of the Hearing Procedures is revised to provide that the CEA, the Registered Entity or any other Participant may terminate settlement negotiations at any time.

i. Section 1.9 – Remedial Action Directives

Section 1.9.1, Initiation of Remedial Action Directive Hearing, is revised to specify that the CEA will notify NERC within two business days (rather than within two [calendar] days) after the CEA issues a Remedial Action Directive.

Section 1.9.2, Remedial Action Directive Hearing Procedure, is revised to state that the hearing concerning a Remedial Action Directive shall (rather than may) be presided over by a Hearing Officer. The section is also revised to state that the Hearing Body shall issue its summary written decision within 10 days following submission of the last brief (rather than within 10 days following the hearing). Finally, text is added to clarify that "upon issuance of the summary written decision, the Registered Entity is required to comply with the Remedial Action Directive as specified in the summary written decision;" that is, the obligation to comply is not postponed until the Hearing Body issues its full written decision.

G. Revisions to Appendix 5B, *Statement of Compliance Registry Criteria*

There is one revision to Appendix 5B, which is shown in legislative style in **Attachment 5B** to this Petition. Specifically, on pages 10-11 of Appendix 5B, item V has been revised as follows:

> If NERC or a Regional Entity encounters an organization that is not listed in the Compliance Registry, but which should be subject to the Reliability Standards, NERC or the Regional Entity is obligated and will initiate actions to add that organization to the Compliance Registry, subject to that organization's right to challenge as provide in Section 500 of NERC's Rules of Procedure and as described in Note 3 below.

This revision is necessary to conform the text to current practice, in which there is a single Compliance Registry maintained by NERC, which NERC is responsible for keeping up to date. Previously, the Regional Entities maintained individual Regional Compliance Registries (which "rolled up" into an overall Compliance Registry kept by NERC), and therefore a Regional Entity could add an entity to its Compliance Registry. Pursuant to the renegotiated delegation agreements that became effective January 1, 2011, NERC assumed responsibility for maintaining the single, overall Compliance Registry. However, NERC continues to be dependent on the Regional Entities (along with other sources) to supply NERC with new and updated information concerning the entities that are or should be included in the Compliance Registry, the reliability functions for which the entities should be registered, their contact information, and so forth. Therefore, the revision to Appendix 5B recognizes that while a Regional Entity would no longer unilaterally add a new entity to its Compliance Registry, the Regional Entity would be expected to inform NERC of any entities the Regional Entity discovers or determines that should be added to the Compliance Registry.

H. Deletion of Appendix 6, *System Operator Program Certification Manual*

Appendix 6 is being deleted from the ROP, and, as described above in §III.B.3 concerning to revisions to ROP §600, the substantive provisions of Appendix 6 are being moved into §600. Appendix 6 is being deleted from the ROP because it contains a significant amount of administrative detail about the System Operator Certification Program that does not rise to the level of an "ERO Rule," does not need to be included in the ROP, and does not warrant going through the ROP approval process, including a 45-day posting and comment period, NERC Board approval and FERC approval in order to make changes. For example, it is not necessary to include in the ROP information on how and where to register for a Certification examination or how early to arrive at the testing center on the day of the examination, which is included in Appendix 6. As noted, the substantive provisions of Appendix 6 are being moved into ROP

§600. Additionally, the NERC Personnel Certification Governance Committee has developed a non-ROP manual containing administrative details concerning the program. The NERC Board accepted this manual on February 23, 2012.

IV. NERC APPROVALS FOR THE PROPOSED REVISIONS

As described in §III.A above, the proposed ROP revisions are the result of a comprehensive review of the ROP that was initiated in 2011 and involved the work of several teams or working groups as well as reviews by NERC departments of ROP sections and Appendices relevant to their respective responsibilities. The ROP revisions proposed by these teams and by individual NERC departments were reviewed by NERC management to eliminate proposed revisions that did not appear to be warranted or to provide a clear improvement in the text of the ROP provisions proposed to be revised.

An initial set of proposed revisions to §100-1600 of the ROP and Appendices 4B and 4C was posted for stakeholder comment from July 1 to August 15, 2011. Numerous comments were received from stakeholders. Based on the comments received on this posting, additional revisions (including deletion of some of the originally-proposed revisions) were developed for ROP §100-1600 and Appendices 4B and 4C. A second posting period for stakeholder comment occurred from November 7 to December 22, 2011, involving proposed revisions to ROP §100-1700, Appendices 4B, 4C, 5A and 8 and the proposed deletion of Appendix 3C and Appendix 6. Numerous comments were also received on this posting. Additionally, the proposed revisions were discussed at the NERC Member Representatives Committee meetings held on November 2, 2011 and February 8, 2012. Following the February 9, 2012 NERC Board meeting, additional comments on the proposed revisions were accepted and considered.

As a result of stakeholder comments submitted during the posting and comment periods, in the public forums and through other means, numerous changes were made to the proposed ROP revisions from the versions originally presented for stakeholder comment. These changes

included both the additional revision of, or withdrawal of revisions to, individual ROP provisions (including identification of the need for a revision to Appendix 5A), as well as the withdrawal of the proposed revisions to §500 of the ROP, Appendix 5A and Appendix 8.

The NERC Board approved the proposed ROP revisions on March 14, 2012.

Respectfully submitted,

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ATTACHMENTS 1A – 5B

(Available on the NERC Website at
http://www.nerc.com/fileUploads/File/Filings/Attachments_ROP_Changes.pdf)