

SCHIFF HARDIN LLP

A Limited Liability Partnership

Owen E. MacBride
(312) 258-5680
Email: omacbride@schiffhardin.com

233 SOUTH WACKER DRIVE
SUITE 6600
CHICAGO, ILLINOIS 60606

Tel.: 312.258.5500
Fax: 312.258.5700

www.schiffhardin.com

May 7, 2012

VIA ELECTRONIC FILING

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: North American Electric Reliability Corporation
Docket No. RR12-___-___
Petition of the North American Electric Reliability Corporation for Approval of
Revisions to its Rules of Procedure**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby submits the “Petition of the North American Electric Reliability Corporation for Approval of Revisions to its Rules of Procedure.”

NERC’s filing consists of: (1) this transmittal letter, (2) the Petition, which follows this transmittal letter, and (3) Attachments 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, and 5B, all of which is being transmitted in a single pdf file. The Table of Contents to the Petition lists and identifies the Attachments.

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

/s/ Owen E. MacBride
Owen E. MacBride

Attorney for North American Electric
Reliability Corporation

UNITED STATES OF AMERICA
Before the
FEDERAL ENERGY REGULATORY COMMISSION

**NORTH AMERICAN ELECTRIC)
RELIABILITY CORPORATION) Docket No. RR12-__-000**

**PETITION OF
THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
FOR APPROVAL OF REVISIONS TO ITS RULES OF PROCEDURE**

Gerald W. Cauley
President and Chief Executive Officer
North American Electric Reliability Corporation
3353 Peachtree Road
North Tower, Suite 600
Atlanta, GA 30326
(404) 446-2560
(404) 467-0474 – facsimile

David N. Cook
Senior Vice President and General Counsel
Rebecca J. Michael
Associate General Counsel for Corporate
 and Regulatory Matters
North American Electric Reliability Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 400-3000
(202) 644-8099 – facsimile
David.cook@nerc.net
rebecca.michael@nerc.net

Owen E. MacBride
Debra Ann Palmer
Schiff Hardin LLP
1666 K Street, N.W., Suite 300
Washington, DC 20036-4390
(202) 778-6400
(202) 778-6460 – facsimile
omacbride@schiffhardin.com
dpalmer@schiffhardin.com

May 7, 2012

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ATTACHMENTS:

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*

I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”), pursuant to §215(f) of the Federal Power Act (“FPA”) and 18 C.F.R. §39.10, respectfully requests Commission approval 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*

¹ On January 25, 2012, NERC filed proposed 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). The Commission has not yet acted on the BES Exception Procedure Filing. In the instant filing, the ROP revisions proposed in the BES Exception Procedure Filing are assumed to have been adopted, and the redlined documents submitted in Attachments 1B, 2B, 3B and 5B show only the revisions for which approval is sought in this Petition. In addition, the elimination of Appendix 6 that is proposed in this Petition would supersede the revisions to Appendix 6 that were proposed in the BES Exception Procedure Filing in Docket No. RM12-7-000.

- **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*

In addition, NERC is proposing to eliminate 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 proposes to delete Appendix 3C because it is no longer necessary. As discussed 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.

II. NOTICES AND COMMUNICATIONS

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

Gerald W. Cauley
 President and Chief Executive Officer
 North American Electric Reliability Corporation
 3353 Peachtree Road
 Suite 600, North Tower
 Atlanta, GA 30326
 (404) 446-2560
 (404) 467-0474 – facsimile

David N. Cook*
 Senior Vice President and General Counsel
 Rebecca J. Michael, Associate General Counsel
 for Corporate and Regulatory Matters
 North American Electric Reliability Corporation
 1325 G Street, N.W., Suite 600
 Washington, D.C. 20005
 (202) 400-3000
 (202) 644-8099 – facsimile
David.cook@nerc.net
Rebecca.michael@nerc.net

Owen E. MacBride*
 Debra Ann Palmer
 Schiff Hardin LLP
 1666 K Street, N.W., Suite 300
 Washington, DC 20036-4390
 (202) 778-6400
 (202) 778-6460 – facsimile
omacbride@schiffhardin.com
dpalmer@schiffhardin.com

*Persons to be included on the
 Commission’s official service list

III. BASIS AND PURPOSE OF THE PROPOSED 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, Commission 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

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.

were discussed at several meetings of the NERC Member Representatives Committee and the 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

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.

include Canadian representatives as provided in **Appendix 3B**, *Procedure for Election of 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~~ 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, and NERC and the Regional Entities have authority to monitor compliance, 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 at the Regional Entity level

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

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

⁵If 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.

(“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

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.

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 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 the Commission or to another Applicable Governmental Authority having jurisdiction over the matter, in accordance with the authorities, rules and procedures of the Commission 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

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.

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 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, Public 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.

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.

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 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 807a⁹) 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.

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.

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.

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

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.

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).

7. Section 1700 – Challenges to Determinations

New §1701 and §1702 of the ROP were approved by the Commission effective March 15, 2012. In the BES Exception Procedure Filing (filed while the original proposed §1701 and §1702 were pending before the Commission), NERC submitted proposed revisions to §1701 and a new §1703. In the instant Petition, additional revisions are proposed 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 the Commission approved on January 31, 2012.¹² The ROP revisions approved on January 31, 2012 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”).

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.

¹² *North American Electric Reliability Corporation, Order Approving Amendments to Rules of Procedure*, 138 FERC ¶ 61,072 (2012).

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

Appendix 2 was originally approved by the Commission on January 31, 2012.¹³ Revisions to Appendix 2 (as originally filed) were included in the BES Exception Procedure Filing and are currently pending before the Commission for approval. In the instant Petition, approval is requested for additional revisions to Appendix 2 to incorporate new defined terms and revisions to defined terms resulting from the other proposed 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.

¹³ *Id.*

- 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 proposing to delete Appendix 3C as no longer necessary. Appendix 3C was originally developed in response to directives in P 286 of the Commission’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.¹⁴ 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.¹⁵

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);¹⁶
- 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

¹⁴ *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”).

¹⁵ 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 Commission for approval, none of which would be a good use of time and resources.

¹⁶ 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.

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, Commission 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.¹⁷ 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, 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

¹⁷ For example, the Commission 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.

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 the Commission,¹⁸ and should also promote the sharing of

¹⁸ *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

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.

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:

an affiliate or department that is operated by the same corporate entity or whose compliance activities may be conducted by that entity.”

“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.¹⁹

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.”

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

¹⁹ Additionally, the Commission 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.

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 §1.1.25, 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 it 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 the Commission 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), observers, 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 the Commission 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.²⁰ 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 Commission 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 Commission 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 Commission staff on a Compliance Audit team, a Registered Entity should be allowed to object to the inclusion of a *particular individual* NERC staff or Commission staff member on the audit team based on conflict of interest, bias or similar specific grounds (*e.g.*, the NERC staff member or Commission 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

²⁰ The text of the second paragraph was approved by the Commission in an Order issued October 7, 2011. *North American Electric Reliability Corporation, Order on Compliance Filing*, 137 FERC ¶ 61,028 (2011) at PP 23-31.

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 Commission 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 Commission orders directing that there be no restraints placed on the number of NERC staff or Commission staff members who can participate in a Compliance Audit or on the specific Compliance Audit activities in which NERC staff or Commission staff members can participate.²¹ NERC does not believe that these previous Commission 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 Commission staff member on the same types of grounds that a Registered Entity can object to participation by a Regional Entity staff member, contractor or industry subject matter expert as a member of the Compliance Audit team.²²

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

²¹ 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.

²² Some commenters did propose that Appendix 4C should be revised to prohibit participation by Commission staff on Compliance Audit teams or Compliance Investigation teams. NERC rejected these proposals as being contrary to previous Commission directives.

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. 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 of 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 it 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).²³ 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.

²³ 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.

- 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 Reliability Standards; and for those Regional Entities that perform registered functions²⁴, 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

²⁴ Currently Florida Reliability Coordinating Council, Southwest Power Pool and Western Electricity Coordinating Council.

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 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 the Commission), 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 4C²⁵) 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 Commission Guidance Order on recovery of Penalty costs by ISO/RTOs from third parties²⁶ and furthered by subsequent Commission orders approving proposed tariff provisions of ISO/RTOs providing for the allocation to third parties of Penalties imposed on the RTO/ISO.²⁷ 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 the Commission, that determination will be made by the Commission 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

²⁵ 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."

²⁶ *Order Providing Guidance on Recovery of Reliability Penalty Costs by Regional Transmission Organizations and Independent System Operators*, 122 FERC ¶ 61,247 (2008)

²⁷ *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).

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 the Commission, and disclosure of non-public non-U.S. compliance information to the Commission, 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 the Commission'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 the Commission, the ERO and the applicable Regional Entity such information as is necessary to implement §215 of the FPA as determined by the Commission 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 the Commission.²⁸ 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 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.

²⁸ *North American Electric Reliability Corporation*. Docket No. RR11-3-000, letter Order issued October 17, 2011.

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 the Commission has recently approved;²⁹ 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.

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

²⁹ *Id.*

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 the Commission) will be allowed to permit interventions. NERC recognizes that in previous orders, the Commission concluded that only the Commission would be authorized to allow intervention in NERC or Regional Entity hearings concerning compliance and imposition of Penalties.³⁰ 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 the Commission, 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,

³⁰ *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,³¹ 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.³²

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 the Commission, or any appeal of the ruling on the request to intervene, is being resolved. New subsection (g) provides that a Person allowed to

³¹ In the April 19, 2007 Order, the Commission recognized this circumstance as one in which granting intervention could be appropriate. April 19, 2007 Order at P 150.

³² The Commission 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 the Commission has already indicated it will grant intervention, the need for the intervenor to file an intervention request with the Commission, and the attendant potential delay to the Hearing Body proceeding, can be avoided.

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 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 Commission 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.

V. CONCLUSION

The North American Electric Reliability Corporation respectfully requests that the Commission approve the proposed revisions to the NERC Rules of Procedure set forth in **Attachments 1 through 5** to this filing.

Respectfully submitted,

Gerald W. Cauley
President and Chief Executive Officer
North American Electric Reliability Corporation
3353 Peachtree Road
Suite 600, North Tower
Atlanta, GA 30326
(404) 446-2560
(404) 467-0474 – facsimile

David N. Cook
Senior Vice President and General Counsel
Rebecca J. Michael, Associate General Counsel
for Corporate and Regulatory Matters
North American Electric Reliability Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 400-3000
(202) 644-8099 – facsimile
David.cook@nerc.net
Rebecca.michael@nerc.net

/s/ Owen E. MacBride
Owen E. MacBride
Debra Ann Palmer
Schiff Hardin LLP
1666 K Street, N.W., Suite 300
Washington, DC 20036-4390
(202) 778-6400
(202) 778-6460 – facsimile
omacbride@schiffhardin.com
dpalmer@schiffhardin.com

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

ATTACHMENT 1A

REVISED RULES OF PROCEDURE SECTIONS 100-1700

CLEAN VERSION

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

Proposed Revisions 5-04-2012
[Incorporates proposed revisions filed with FERC
on January 25, 2012]

Rules of Procedure

Effective: March 15, 2012

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SECTION 100 — APPLICABILITY OF RULES OF PROCEDURE

NERC and NERC Members shall comply with these Rules of Procedure. Each Regional Entity shall comply with these Rules of Procedure as applicable to functions delegated to the Regional Entity by NERC or as required by an Applicable Governmental Authority or as otherwise provided.

Each Bulk Power System owner, operator, and user shall comply with all Rules of Procedure of NERC that are made applicable to such entities by approval pursuant to applicable legislation or regulation, or pursuant to agreement.

Any entity that is unable to comply or that is not in compliance with a NERC Rule of Procedure shall immediately notify NERC in writing, stating the Rule of Procedure of concern and the reason for not being able to comply with the Rule of Procedure.

NERC shall evaluate each case and inform the entity of the results of the evaluation. If NERC determines that a Rule of Procedure has been violated, or cannot practically be complied with, NERC shall notify the Applicable Governmental Authorities and take such other actions as NERC deems appropriate to address the situation.

NERC shall comply with each approved Reliability Standard that identifies NERC or the Electric Reliability Organization as a responsible entity. Regional Entities shall comply with each approved Reliability Standard that identifies Regional Entities as responsible entities. A violation by NERC or a Regional Entity of such a Reliability Standard shall constitute a violation of these Rules of Procedure.

SECTION 200 — DEFINITIONS OF TERMS

Definitions of terms used in the NERC Rules of Procedure are set forth in **Appendix 2, *Definitions Used in the Rules of Procedure.***

SECTION 300 — RELIABILITY STANDARDS DEVELOPMENT

301. General

NERC shall develop and maintain Reliability Standards that apply to Bulk Power System owners, operators, and users and that enable NERC and Regional Entities to measure the reliability performance of Bulk Power System owners, operators, and users; and to hold them accountable for Reliable Operation of the Bulk Power Systems. The Reliability Standards shall be technically excellent, timely, just, reasonable, not unduly discriminatory or preferential, in the public interest, and consistent with other applicable standards of governmental authorities.

302. Essential Attributes for Technically Excellent Reliability Standards

1. **Applicability** — Each Reliability Standard shall clearly identify the functional classes of entities responsible for complying with the Reliability Standard, with any specific additions or exceptions noted. Such functional classes¹ include: Reliability Coordinators, Balancing Authorities, Transmission Operators, Transmission Owners, Generator Operators, Generator Owners, Interchange Authorities, Transmission Service Providers, market operators, Planning Authorities, Transmission Planners, Resource Planners, Load-Serving Entities, Purchasing-Selling Entities, and Distribution Providers. Each Reliability Standard shall also identify the geographic applicability of the Reliability Standard, such as the entire North American Bulk Power System, an Interconnection, or within a Region. A Reliability Standard may also identify any limitations on the applicability of the Reliability Standard based on electric Facility characteristics.
2. **Reliability Objectives** — Each Reliability Standard shall have a clear statement of purpose that shall describe how the Reliability Standard contributes to the reliability of the Bulk Power System. The following general objectives for the Bulk Power System provide a foundation for determining the specific objective(s) of each Reliability Standard:
 - 2.1 **Reliability Planning and Operating Performance**— Bulk Power Systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions.
 - 2.2 **Frequency and Voltage Performance**— The frequency and voltage of Bulk Power Systems shall be controlled within defined limits through the balancing of Real and Reactive Power supply and demand.

¹ These functional classes of entities are derived from NERC's Reliability Functional Model. When a Reliability Standard identifies a class of entities to which it applies, that class must be defined in the Glossary of Terms Used in NERC Reliability Standards.

- 2.3 **Reliability Information** — Information necessary for the planning and operation of reliable Bulk Power Systems shall be made available to those entities responsible for planning and operating Bulk Power Systems.
 - 2.4 **Emergency Preparation** — Plans for emergency operation and system restoration of Bulk Power Systems shall be developed, coordinated, maintained, and implemented.
 - 2.5 **Communications and Control** — Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of Bulk Power Systems.
 - 2.6 **Personnel** — Personnel responsible for planning and operating Bulk Power Systems shall be trained and qualified, and shall have the responsibility and authority to implement actions.
 - 2.7 **Wide-Area View** — The reliability of the Bulk Power Systems shall be assessed, monitored, and maintained on a Wide-Area basis.
 - 2.8 **Security** — Bulk Power Systems shall be protected from malicious physical or cyber attacks.
3. **Performance Requirement or Outcome**— Each Reliability Standard shall state one or more performance Requirements, which if achieved by the applicable entities, will provide for a reliable Bulk Power System, consistent with good utility practices and the public interest. Each Requirement is not a “lowest common denominator” compromise, but instead achieves an objective that is the best approach for Bulk Power System reliability, taking account of the costs and benefits of implementing the proposal.
 4. **Measurability** — Each performance Requirement shall be stated so as to be objectively measurable by a third party with knowledge or expertise in the area addressed by that Requirement. Each performance Requirement shall have one or more associated measures used to objectively evaluate compliance with the Requirement. If performance can be practically measured quantitatively, metrics shall be provided to determine satisfactory performance.
 5. **Technical Basis in Engineering and Operations**— Each Reliability Standard shall be based upon sound engineering and operating judgment, analysis, or experience, as determined by expert practitioners in that particular field.
 6. **Completeness** — Reliability Standards shall be complete and self-contained. The Reliability Standards shall not depend on external information to determine the required level of performance.

7. **Consequences for Noncompliance** — In combination with guidelines for Penalties and sanctions, as well as other ERO and Regional Entity compliance documents, the consequences of violating a Reliability Standard are clearly presented to the entities responsible for complying with the Reliability Standards.
8. **Clear Language** — Each Reliability Standard shall be stated using clear and unambiguous language. Responsible entities, using reasonable judgment and in keeping with good utility practices, are able to arrive at a consistent interpretation of the required performance.
9. **Practicality** — Each Reliability Standard shall establish Requirements that can be practically implemented by the assigned responsible entities within the specified effective date and thereafter.
10. **Consistent Terminology** — To the extent possible, Reliability Standards shall use a set of standard terms and definitions that are approved through the NERC Reliability Standards development process.

303. Relationship between Reliability Standards and Competition

To ensure Reliability Standards are developed with due consideration of impacts on competition, to ensure Reliability Standards are not unduly discriminatory or preferential, and recognizing that reliability is an essential requirement of a robust North American economy, each Reliability Standard shall meet all of these market-related objectives:

1. **Competition** — A Reliability Standard shall not give any market participant an unfair competitive advantage.
2. **Market Structures** — A Reliability Standard shall neither mandate nor prohibit any specific market structure.
3. **Market Solutions** — A Reliability Standard shall not preclude market solutions to achieving compliance with that Reliability Standard.
4. **Commercially Sensitive Information** — A Reliability Standard shall not require the public disclosure of commercially sensitive information or other Confidential Information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with Reliability Standards.
5. **Adequacy** — NERC shall not set Reliability Standards defining an adequate amount of, or requiring expansion of, Bulk Power System resources or delivery capability.

304. Essential Principles for the Development of Reliability Standards

NERC shall develop Reliability Standards in accordance with the NERC *Standard Processes Manual*, which is incorporated into these Rules of Procedure as **Appendix 3A**. Appeals in connection with the development of a Reliability Standard shall also be conducted in accordance with the NERC *Standard Processes Manual*. Any amendments or revisions to the *Standard Processes Manual* shall be consistent with the following essential principles:

1. **Openness** — Participation shall be open to all Persons and who are directly and materially affected by the reliability of the North American Bulk Power System. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in NERC or any other organization, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements.
2. **Transparency** — The process shall be transparent to the public.
3. **Consensus-building** — The process shall build and document consensus for each Reliability Standard, both with regard to the need and justification for the Reliability Standard and the content of the Reliability Standard.
4. **Fair Balance of Interests** — The process shall fairly balance 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 Segment, individual or organization shall be able to defeat a matter.
5. **Due Process** — Development of Reliability Standards shall provide reasonable notice and opportunity for any Person with a direct and material interest to express views on a proposed Reliability Standard and the basis for those views, and to have that position considered in the development of the Reliability Standards.
6. **Timeliness** — Development of Reliability Standards shall be timely and responsive to new and changing priorities for reliability of the Bulk Power System.

305. Registered Ballot Body

NERC Reliability Standards shall be approved by a Registered Ballot Body prior to submittal to the Board and then to Applicable Governmental Authorities for their approval, where authorized by applicable legislation or agreement. This Section 305 sets forth the rules pertaining to the composition of, and eligibility to participate in, the Registered Ballot Body.

1. **Eligibility to Vote on Reliability Standards** — Any person or entity may join the Registered Ballot Body to vote on Reliability Standards, whether or not such person or entity is a Member of NERC.
2. **Inclusive Participation** — The Segment qualification guidelines are inclusive; i.e., any entity with a legitimate interest in the reliability of the Bulk Power System that can meet any one of the eligibility criteria for a Segment is entitled to belong to and vote in each Segment for which it qualifies, subject to limitations defined in Sections 305.3 and 305.5.
3. **General Criteria for Registered Ballot Body Membership** — The general criteria for membership in the Segments are:
 - 3.1 **Multiple Segments** — A corporation or other organization with integrated operations or with affiliates that qualifies to belong to more than one Segment (e.g., Transmission Owners and Load-Serving Entities) may join once in each Segment for which it qualifies, provided that each Segment constitutes a separate membership and the organization is represented in each Segment by a different representative. Affiliated entities are collectively limited to one membership in each Segment for which they are qualified.
 - 3.2 **Withdrawing from a Segment or Changing Segments** — After its initial registration in a Segment, each registered participant may elect to withdraw from a Segment or apply to change Segments at any time.
 - 3.3 **Review of Segment Criteria** — The Board shall review the qualification guidelines and rules for joining Segments at least every three years to ensure that the process continues to be fair, open, balanced, and inclusive. Public input will be solicited in the review of these guidelines.
4. **Proxies for Voting on Reliability Standards** — Any registered participant may designate an agent or proxy to vote on its behalf. There are no limits on how many proxies an agent may hold. However, for the proxy to be valid, NERC must have in its possession written documentation signed by the representative of the registered participant that the voting right by proxy has been transferred from the registered participant to the agent.
5. **Segments** — The specific criteria for membership in each Registered Ballot Body Segment are defined in the *Development of the Registered Ballot Body in Appendix 3D*.
6. **Review of Segment Entries** — NERC shall review all applications for joining the Registered Ballot Body, and shall make a determination of whether the applicant's self-selection of a Segment satisfies at least one of the guidelines to

belong to that Segment. The entity shall then become eligible to participate as a voting member of that Segment. The Standards Committee shall resolve disputes regarding eligibility for membership in a Segment, with the applicant having the right of appeal to the Board.

306. Standards Committee

The Standards Committee shall provide oversight of the Reliability Standards development process to ensure stakeholder interests are fairly represented. The Standards Committee shall not under any circumstance change the substance of a draft or approved Reliability Standard.

1. **Membership** — The Standards Committee is a representative committee comprising representatives of two members of each of the Segments in the Registered Ballot Body and two officers elected to represent the interests of the industry as a whole.
2. **Elections** — Standards Committee members are elected for staggered (one per Segment per year) two-year terms by the respective Segments in accordance with the *Procedure for the Election of Members of the NERC Standards Committee*, which is incorporated into these Rules of Procedure as **Appendix 3B**. Segments may use their own election procedure if such a procedure is ratified by two-thirds of the members of a Segment and approved by the Board.
3. **Canadian Representation**

The Standards Committee will include Canadian representation as provided in **Appendix 3B**, *Procedure for the Election of Members of the NERC Standards Committee*.
4. **Open Meetings** — All meetings of the Standards Committee shall be open and publicly noticed on the NERC website.

307. Standards Process Management

NERC shall assign a standards process manager to administer the development of continent-wide Reliability Standards and a regional standards manager to administer the development of Regional Reliability Standards. The standards process manager shall be responsible for ensuring that the development and revision of Reliability Standards are in accordance with the *NERC Standard Processes Manual*. The standards process manager and the regional standards manager shall work to achieve the highest degree of integrity and consistency of quality and completeness of the Reliability Standards. The regional standards manager shall coordinate with any Regional Entities that develop Regional Reliability Standards to ensure those Regional Reliability Standards are effectively integrated with the NERC Reliability Standards.

308. Steps in the Development of Reliability Standards

1. **Procedure** — NERC shall develop Reliability Standards through the process set forth in the NERC *Standard Processes Manual* (**Appendix 3A**). The *Standard Processes Manual* includes provisions for developing Reliability Standards that can be completed using expedited processes, including a process to develop Reliability Standards to address national security situations that involve confidential issues.
2. **Board Adoption** — Reliability Standards or revisions to Reliability Standards approved by the ballot pool in accordance with the *Standard Processes Manual* shall be submitted for adoption by the Board. No Reliability Standard or revision to a Reliability Standard shall be effective unless adopted by the Board.
3. **Governmental Approval** — After Board adoption, a Reliability Standard or revision to a Reliability Standard shall be submitted to all Applicable Governmental Authorities in accordance with Section 309. No Reliability Standard or revision to a Reliability Standard shall be effective within a geographic area over which an Applicable Governmental Authority has jurisdiction unless it is approved by such Applicable Governmental Authority or is otherwise made effective pursuant to the laws applicable to such Applicable Governmental Authority.

309. Filing of Reliability Standards for Approval by Applicable Governmental Authorities

1. **Filing of Reliability Standards for Approval** — Where authorized by applicable legislation or agreement, NERC shall file with the Applicable Governmental Authorities each Reliability Standard, modification to a Reliability Standard, or withdrawal of a Reliability Standard that is adopted by the Board. Each filing shall be in the format required by the Applicable Governmental Authority and shall include: a concise statement of the basis and purpose of the Reliability Standard; the text of the Reliability Standard; the implementation plan for the Reliability Standard; a demonstration that the Reliability Standard meets the essential attributes of Reliability Standards as stated in Section 302; the drafting team roster; the ballot pool and final ballot results; and a discussion of public comments received during the development of the Reliability Standard and the consideration of those comments.
2. **Remanded Reliability Standards and Directives to Develop Standards** — If an Applicable Governmental Authority remands a Reliability Standard to NERC or directs NERC to develop a Reliability Standard, NERC shall within five (5) business days notify all other Applicable Governmental Authorities, and shall within thirty (30) calendar days report to all Applicable Governmental Authorities

a plan and timetable for modification or development of the Reliability Standard. Reliability Standards that are remanded or directed by an Applicable Governmental Authority shall be modified or developed using the *Standard Processes Manual*. NERC shall, during the development of a modification for the remanded Reliability Standard or directed Reliability Standard, consult with other Applicable Governmental Authorities to coordinate any impacts of the proposed Reliability Standards in those other jurisdictions. The expedited standards development process may be applied if necessary to meet a timetable for action required by the Applicable Governmental Authorities, respecting to the extent possible the provisions in the Reliability Standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interest in developing Reliability Standards. If the Board of Trustees determines that the process did not result in a Reliability Standard that addresses a specific matter that is identified in a directive issued by an Applicable Governmental Authority, then Rule 321 of these Rules of Procedure shall apply.

3. **Directives to Develop Reliability Standards under Extraordinary Circumstances** — An Applicable Governmental Authority may, on its own initiative, determine that extraordinary circumstances exist requiring expedited development of a Reliability Standard. In such a case, the Applicable Governmental Authority may direct the development of a Reliability Standard within a certain deadline. NERC staff shall prepare the Standards Authorization Request. The proposed Reliability Standard will then proceed through the Reliability Standards development process, using the expedited action process described in the *Standard Processes Manual* as necessary to meet the specified deadline. The timeline will be developed to respect, to the extent possible, the provisions in the Reliability Standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in developing Reliability Standards. If the Board of Trustees determines that the process did not result in a Reliability Standard that addresses a specific matter that is identified in a directive issued by an Applicable Governmental Authority, then Rule 321 of these Rules of Procedure shall apply, with appropriate modification of the timeline.

310. Annual Reliability Standards Development Plan

NERC shall develop and provide an annual Reliability Standards Development Plan for development of Reliability Standards to the Applicable Governmental Authorities. NERC shall consider the comments and priorities of the Applicable Governmental Authorities in developing and updating the annual Reliability Standards Development Plan. Each annual Reliability Standards Development Plan shall include a progress report comparing results achieved to the prior year's Reliability Standards Development Plan.

311. Regional Entity Standards Development Procedures

1. **NERC Approval of Regional Entity Reliability Standards Development Procedure** — To enable a Regional Entity to develop Regional Reliability Standards that are to be recognized and made part of NERC Reliability Standards, a Regional Entity may request NERC to approve a Regional Reliability Standards development procedure.
2. **Public Notice and Comment on Regional Reliability Standards Development Procedure** — Upon receipt of such a request, NERC shall publicly notice and request comment on the proposed Regional Reliability Standards development procedure, allowing a minimum of 45 days for comment. The Regional Entity shall have an opportunity to resolve any objections identified in the comments and may choose to withdraw the request, revise the Regional Reliability Standards development procedure and request another posting for comment, or submit the Regional Reliability Standards development procedure, along with its consideration of any objections received, for approval by NERC.
3. **Evaluation of Regional Reliability Standards Development Procedure** — NERC shall evaluate whether a Regional Reliability Standards development procedure meets the criteria listed below and shall consider stakeholder comments, any unresolved stakeholder objections, and the consideration of comments provided by the Regional Entity, in making that determination. If NERC determines the Regional Reliability Standards development procedure meets these requirements, the Regional Reliability Standards development procedure shall be submitted to the Board for approval. The Board shall consider the recommended action, stakeholder comments, any unresolved stakeholder comments, and the Regional Entity consideration of comments in determining whether to approve the Regional Reliability Standards development procedure.
 - 3.1 **Evaluation Criteria** — The Regional Reliability Standards development procedure shall be:
 - 3.1.1 **Open** — The Regional Reliability Standards development procedure shall provide that any person or entity who is directly and materially affected by the reliability of the Bulk Power Systems within the Regional Entity shall be able to participate in the development and approval of Reliability Standards. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in the Regional Entity, a Regional Entity or any organization, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements.
 - 3.1.2 **Inclusive** — The Regional Reliability Standards development procedure shall provide that any Person with a direct and material

interest has a right to participate by expressing an opinion and its basis, having that position considered, and appealing through an established appeals process if adversely affected.

- 3.1.3 **Balanced** — The Regional Reliability Standards development procedure shall have a balance of interests and shall not permit any two interest categories to dominate a matter or any single interest category to defeat a matter.
 - 3.1.4 **Due Process** — The Regional Reliability Standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the Regional Reliability Standards development procedure shall include public notice of the intent to develop a Regional Reliability Standard, a public comment period on the proposed Regional Reliability Standard, due consideration of those public comments, and a ballot of interested stakeholders.
 - 3.1.5 **Transparent** — All actions material to the development of Regional Reliability Standards shall be transparent. All Regional Reliability Standards development meetings shall be open and publicly noticed on the Regional Entity's website.
 - 3.1.6 **Accreditation of Regional Standards Development Procedure** — A Regional Entity's Regional Reliability Standards development procedure that is accredited by the American National Standards Institute shall be deemed to meet the criteria listed in this Section 311.3.1, although such accreditation is not a prerequisite for approval by NERC.
 - 3.1.7 **Use of NERC Procedure** — A Regional Entity may adopt the NERC *Standard Processes Manual* as the Regional Reliability Standards development procedure, in which case the Regional Entity's Regional Reliability Standards development procedure shall be deemed to meet the criteria listed in this Section 311.3.1.
4. **Revisions of Regional Reliability Standards Development Procedures** — Any revision to a Regional Reliability Standards development procedure shall be subject to the same approval requirements set forth in Sections 311.1 through 311.3.
 5. **Duration of Regional Reliability Standards Development Procedures** — The Regional Reliability Standards development procedure shall remain in effect until such time as it is replaced with a new version approved by NERC or it is withdrawn by the Regional Entity. The Regional Entity may, at its discretion, withdraw its Regional Reliability Standards development procedure at any time.

312. Regional Reliability Standards

1. **Basis for Regional Reliability Standards** — Regional Entities may propose Regional Reliability Standards that set more stringent reliability requirements than the NERC Reliability Standard or cover matters not covered by an existing NERC Reliability Standard. Such Regional Reliability Standards shall in all cases be submitted to NERC for adoption and, if adopted, made part of the NERC Reliability Standards and shall be enforceable in accordance with the delegation agreement between NERC and the Regional Entity or other instrument granting authority over enforcement to the Regional Entity. No entities other than NERC and the Regional Entity shall be permitted to develop Regional Reliability Standards that are enforceable under statutory authority delegated to NERC and the Regional Entity.
2. **Regional Reliability Standards That are Directed by a NERC Reliability Standard** — Although it is the intent of NERC to promote uniform Reliability Standards across North America, in some cases it may not be feasible to achieve a reliability objective with a Reliability Standard that is uniformly applicable across North America. In such cases, NERC may direct Regional Entities to develop Regional Reliability Standards necessary to implement a NERC Reliability Standard. Such Regional Reliability Standards that are developed pursuant to a direction by NERC shall be made part of the NERC Reliability Standards.
3. **Procedure for Developing an Interconnection-wide Regional Standard** — A Regional Entity organized on an Interconnection-wide basis may propose a Regional Reliability Standard for approval as a NERC Reliability Standard to be made mandatory for all applicable Bulk Power System owners, operators, and users within that Interconnection.
 - 3.1 **Presumption of Validity** — An Interconnection-wide Regional Reliability Standard that is determined by NERC to be just, reasonable, and not unduly discriminatory or preferential, and in the public interest, and consistent with such other applicable standards of governmental authorities, shall be adopted as a NERC Reliability Standard. NERC shall rebuttably presume that a Regional Reliability Standard developed, in accordance with a Regional Reliability Standards development process approved by NERC, by a Regional Entity organized on an Interconnection-wide basis, is just, reasonable, and not unduly discriminatory or preferential, and in the public interest, and consistent with such other applicable standards of governmental authorities.
 - 3.2 **Notice and Comment Procedure for Interconnection-wide Regional Reliability Standard** — NERC shall publicly notice and request comment on the proposed Interconnection-wide Regional Reliability Standard, allowing a minimum of 45 days for comment. NERC may publicly notice and post for comment the proposed Regional Reliability

Standard concurrent with similar steps in the Regional Entity's Regional Reliability Standards development process. The Regional Entity shall have an opportunity to resolve any objections identified in the comments and may choose to comment on or withdraw the request, revise the proposed Regional Reliability Standard and request another posting for comment, or submit the proposed Regional Reliability Standard along with its consideration of any objections received, for approval by NERC.

- 3.3 **Adoption of Interconnection-wide Regional Reliability Standard by NERC** — NERC shall evaluate and recommend whether a proposed Interconnection-wide Regional Reliability Standard has been developed in accordance with all applicable procedural requirements and whether the Regional Entity has considered and resolved stakeholder objections that could serve as a basis for rebutting the presumption of validity of the Regional Reliability Standard. The Regional Entity, having been notified of the results of the evaluation and recommendation concerning the proposed Regional Reliability Standard, shall have the option of presenting the proposed Regional Reliability Standard to the Board for adoption as a NERC Reliability Standard. The Board shall consider the Regional Entity's request, NERC's recommendation for action on the Regional Reliability Standard, any unresolved stakeholder comments, and the Regional Entity's consideration of comments, in determining whether to adopt the Regional Reliability Standard as a NERC Reliability Standard.
 - 3.4 **Applicable Governmental Authority Approval** — An Interconnection-wide Regional Reliability Standard that has been adopted by the Board shall be filed with the Applicable Governmental Authorities for approval, where authorized by applicable legislation or agreement, and shall become effective when approved by such Applicable Governmental Authorities or on a date set by the Applicable Governmental Authorities.
 - 3.5 **Enforcement of Interconnection-wide Regional Reliability Standard** — An Interconnection-wide Regional Reliability Standard that has been adopted by the Board and by the Applicable Governmental Authorities or is otherwise made effective within Canada as mandatory within a particular Region shall be applicable and enforced as a NERC Reliability Standard within the Region.
4. **Procedure for Developing Non-Interconnection-Wide Regional Reliability Standards** — Regional Entities that are not organized on an Interconnection-wide basis may propose Regional Reliability Standards to apply within their respective Regions. Such Regional Reliability Standards may be developed through the NERC Reliability Standards development procedure, or alternatively, through a Regional Reliability Standards development procedure that has been approved by NERC.

- 4.1 **No Presumption of Validity** — Regional Reliability Standards that are not proposed to be applied on an Interconnection-wide basis are not presumed to be valid but may be demonstrated by the proponent to be valid.
- 4.2 **Notice and Comment Procedure for Non-Interconnection-wide Regional Reliability Standards** — NERC shall publicly notice and request comment on the proposed Regional Reliability Standard, allowing a minimum of 45 days for comment. NERC may publicly notice and post for comment the proposed Regional Reliability Standard concurrent with similar steps in the Regional Entity’s Regional Reliability Standards development process. The Regional Entity shall have an opportunity to comment on or resolve any objections identified in the comments and may choose to withdraw the request, revise the proposed Regional Reliability Standard and request another posting for comment, or submit the proposed Regional Reliability Standard along with its consideration of any objections received, for adoption by NERC.
- 4.3 **NERC Adoption of Non-Interconnection-wide Regional Reliability Standards** — NERC shall evaluate and recommend whether a proposed non-Interconnection-wide Regional Reliability Standard has been developed in accordance with all applicable procedural requirements and whether the Regional Entity has considered and resolved stakeholder objections. The Regional Entity, having been notified of the results of the evaluation and recommendation concerning proposed Regional Reliability Standard, shall have the option of presenting the proposed Regional Reliability Standard to the Board for adoption as a NERC Reliability Standard. The Board shall consider the Regional Entity’s request, the recommendation for action on the Regional Reliability Standard, any unresolved stakeholder comments, and the Regional Entity’s consideration of comments, in determining whether to adopt the Regional Reliability Standard as a NERC Reliability Standard.
- 4.4 **Applicable Governmental Authority Approval** — A non-Interconnection-wide Regional Reliability Standard that has been adopted by the Board shall be filed with the Applicable Governmental Authorities for approval, where authorized by applicable legislation or agreement, and shall become effective when approved by such Applicable Governmental Authorities or on a date set by the Applicable Governmental Authorities.
- 4.5 **Enforcement of Non-Interconnection-wide Regional Reliability Standards** — A non-Interconnection-wide Regional Reliability Standard that has been adopted by the Board and by the Applicable Governmental Authorities or is otherwise made effective within Canada as mandatory

within a particular Region shall be applicable and enforced as a NERC Reliability Standard within the Region.

5. **Appeals** — A Regional Entity shall have the right to appeal NERC’s decision not to adopt a proposed Regional Reliability Standard or Variance to the Commission or other Applicable Governmental Authority.

313. Other Regional Criteria, Guides, Procedures, Agreements, Etc.

1. **Regional Criteria** — Regional Entities may develop Regional Criteria that are necessary to implement, to augment, or to comply with NERC Reliability Standards, but which are not Reliability Standards. Regional Criteria may also address issues not within the scope of Reliability Standards, such as resource adequacy. Regional Criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents used to enhance the reliability of the Bulk Power System in the Region. These documents typically provide benefits by promoting more consistent implementation of the NERC Reliability Standards within the Region. These documents are not NERC Reliability Standards, Regional Reliability Standards, or regional Variances, and therefore are not enforceable under authority delegated by NERC pursuant to delegation agreements and do not require NERC approval.
2. **Catalog of Regional Criteria** — NERC shall maintain a current catalog of Regional Criteria. Regional Entities shall provide a catalog listing of Regional Criteria to NERC and shall notify NERC of changes to the listing. Regional Entities shall provide any listed document to NERC upon written request.

314. Conflicts with Statutes, Regulations, and Orders

Notice of Potential Conflict — If a Bulk Power System owner, operator, or user determines that a NERC or Regional Reliability Standard may conflict with a function, rule, order, tariff, rate schedule, legislative requirement or agreement that has been accepted, approved, or ordered by a governmental authority affecting that entity, the entity shall expeditiously notify the governmental authority, NERC, and the relevant Regional Entity of the conflict.

1. **Determination of Conflict** — NERC, upon request of the governmental authority, may advise the governmental authority regarding the conflict and propose a resolution of the conflict, including revision of the Reliability Standard if appropriate.
2. **Regulatory Precedence** — Unless otherwise ordered by a governmental authority, the affected Bulk Power System owner, operator, or user shall continue to follow the function, rule, order, tariff, rate schedule, legislative requirement, or agreement accepted, approved, or ordered by the governmental authority until the

governmental authority finds that a conflict exists and orders a remedy and such remedy is affected.

315. Revisions to NERC Standard Processes Manual

Any person or entity may submit a written request to modify NERC *Standard Processes Manual*. Consideration of the request and development of the revision shall follow the process defined in the NERC *Standard Processes Manual*. Upon approval by the Board, the revision shall be submitted to the Applicable Governmental Authorities for approval. Changes shall become effective only upon approval by the Applicable Governmental Authorities or on a date designated by the Applicable Governmental Authorities or as otherwise applicable in a particular jurisdiction.

316. Accreditation

NERC shall seek and maintain accreditation of the NERC Reliability Standards development process by the American National Standards Institute.

317. Five-Year Review of Reliability Standards

NERC shall complete a review of each NERC 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 review process shall be conducted in accordance with the NERC *Standard Processes Manual*. The standards process manager shall be responsible for administration of the five-year review of Reliability Standards. As a result of this review, the NERC Reliability Standard shall be reaffirmed, revised, or withdrawn. If the review indicates a need to revise or withdraw the Reliability Standard, a request for revision or withdrawal shall be prepared, submitted and addressed in accordance with the NERC *Standard Processes Manual*.

318. Coordination with the North American Energy Standards Board

NERC shall maintain a close working relationship with the North American Energy Standards Board and ISO/RTO Council to ensure effective coordination of wholesale electric business practice standards and market protocols with the NERC Reliability Standards.

319. Archived Standards Information

NERC shall maintain a historical record of Reliability Standards information that is no longer maintained on-line. For example, Reliability Standards that have been retired may be removed from the on-line system. Archived information shall be retained indefinitely

as practical, but in no case less than six years or one complete Reliability Standards review cycle from the date on which the Reliability Standard was no longer in effect. Archived records of Reliability Standards information shall be available electronically within 30 days following the receipt by the NERC standards information manager of a written request.

320. Procedure for Developing and Approving Violation Risk Factors and Violation Severity Levels

1. **Development of Violation Risk Factors and Violation Severity Levels** — NERC shall follow the process for developing Violation Risk Factors (VRFs) and Violation Severity Levels (VSLs) as set forth in the *Standard Processes Manual, Appendix 3A* to these Rules of Procedure.
2. **Remands of Directed Revision of VRFs and VSLs by Applicable Governmental Authorities** — If an Applicable Governmental Authority remands or directs a revision to a Board-approved VRF or VSL assignment, the NERC director of standards, after consulting with the standard drafting team, Standards Committee, and the NERC director of compliance operations, will recommend to the Board one of the following actions: (1) filing a request for clarification; (2) filing for rehearing or for review of the Applicable Governmental Authority decision; or (3) approval of the directed revisions to the VRF or VSL. If and to the extent time is available prior to the deadline for the Board's decision, an opportunity for interested parties to comment on the action taken will be provided.
3. **Alternative Procedure for Developing and Approving Violation Risk Factors and Violation Severity Levels** — In the event the Reliability Standards development process fails to produce Violation Risk Factors or Violation Severity Levels for a particular Reliability Standard in a timely manner, the Board of Trustees may approve Violation Risk Factors or Violation Severity Levels for that Reliability Standard after notice and opportunity for comment. In approving VRFs and VSLs, the Board shall consider the inputs of the Member Representatives Committee, affected stakeholders and NERC staff.

321. Special Rule to Address Certain Regulatory Directives

In circumstances where this Rule 321 applies, the Board of Trustees shall have the authority to take one or more of the actions set out below. The Board of Trustees shall have the authority to choose which one or more of the actions are appropriate to the circumstances and need not take these actions in sequential steps.

1. The Standards Committee shall have the responsibility to ensure that standards drafting teams address specific matters that are identified in directives issued by Applicable Governmental Authorities. If the Board of Trustees is presented with a proposed Reliability Standard that fails to address such directives, the Board of Trustees has the authority to remand, with instructions (including establishing a

timetable for action), the proposed Reliability Standard to the Standards Committee.

2. Upon a written finding by the Board of Trustees that a ballot pool has failed to approve a proposed Reliability Standard that contains a provision to address a specific matter identified in a directive issued by an Applicable Governmental Authority, the Board of Trustees has the authority to remand the proposed Reliability Standard to the Standards Committee, with instructions to (i) convene a public technical conference to discuss the issues surrounding the regulatory directive, including whether or not the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, in the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified; (ii) working with NERC staff, prepare a memorandum discussing the issues, an analysis of the alternatives considered and other appropriate matters; and (iii) re-ballot the proposed Reliability Standard one additional time, with such adjustments in the schedule as are necessary to meet the deadline contained in paragraph 2.1 of this Rule.
 - 2.1 Such a re-ballot shall be completed within forty-five (45) days of the remand. The Standards Committee memorandum shall be included in the materials made available to the ballot pool in connection with the re-ballot.
 - 2.2 In any such re-ballot, negative votes without comments related to the proposal shall be counted for purposes of establishing a quorum, but only affirmative votes and negative votes with comments related to the proposal shall be counted for purposes of determining the number of votes cast and whether the proposed Reliability Standard has been approved.
3. If the re-balloted proposed Reliability Standard achieves at least an affirmative two-thirds majority vote of the weighted Segment votes cast, with a quorum established, then the proposed Reliability Standard shall be deemed approved by the ballot pool and shall be considered by the Board of Trustees for approval.
4. If the re-balloted proposed Reliability Standard fails to achieve at least an affirmative two-thirds majority vote of the weighted Segment votes cast, but does achieve at least a sixty percent affirmative majority of the weighted Segment votes cast, with a quorum established, then the Board of Trustees has the authority to consider the proposed Reliability Standard for approval under the following procedures:
 - 4.1 The Board of Trustees shall issue notice of its intent to consider the proposed Reliability Standard and shall solicit written public comment particularly focused on the technical aspects of the provisions of the proposed Reliability Standard that address the specific matter identified in the regulatory directive, including whether or not the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, in

the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified.

- 4.2 The Board of Trustees may, in its discretion, convene a public technical conference to receive additional input on the matter.
- 4.3 After considering the developmental record, the comments received during balloting and the additional input received under paragraphs 4.1 and 4.2 of this Rule, the Board of Trustees has authority to act on the proposed Reliability Standard.
 - 4.3.1 If the Board of Trustees finds that the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest, considering (among other things) whether it is helpful to reliability, practical, technically sound, technically feasible, and cost-justified, then it has authority to approve the proposed Reliability Standard and direct that it be filed with Applicable Governmental Authorities with a request that it be made effective.
 - 4.3.2 If the Board of Trustees is unable to find that the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest, considering (among other things) whether it is helpful to reliability, practical, technically sound, technically feasible, and cost-justified, then it has authority to treat the proposed Reliability Standard as a draft Reliability Standard and direct that the draft Reliability Standard and complete developmental record, including the additional input received under paragraphs 4.1 and 4.2 of this Rule, be filed with the Applicable Governmental Authorities as a compliance filing in response to the order giving rise to the regulatory directive, along with a recommendation that the Reliability Standard not be made effective and an explanation of the basis for the recommendation.
5. Upon a written finding by the Board of Trustees that standard drafting team has failed to develop, or a ballot pool has failed to approve, a proposed Reliability Standard that contains a provision to address a specific matter identified in a directive issued by an Applicable Governmental Authority, the Board of Trustees has the authority to direct the Standards Committee (with the assistance of stakeholders and NERC staff) to prepare a draft Reliability Standard that addresses the regulatory directive, taking account of the entire developmental record pertaining to the matter. If the Standards Committee fails to prepare such draft Reliability Standard, the Board of Trustees may direct NERC management to prepare such draft Reliability Standard.

- 5.1 The Board of Trustees may, in its discretion, convene a public technical conference to receive input on the matter. The draft Reliability Standard shall be posted for a 45-day public comment period.
- 5.2 If, after considering the entire developmental record (including the comments received under paragraph 5.1 of this Rule), the Board of Trustees finds that the draft Reliability Standard, with such modifications as the Board of Trustees determines are appropriate in light of the comments received, is just, reasonable, not unduly discriminatory or preferential, and in the public interest, considering (among other things) whether it is practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the Bulk Power System, then the Board of Trustees has the authority to approve the draft Reliability Standard and direct that the proposed Reliability Standard be filed with Applicable Governmental Authorities with a request that the proposed Reliability Standard be made effective.
- 5.3 If, after considering the entire developmental record (including the comments received under paragraph 5.1 of this Rule), the Board of Trustees is unable to find that the draft Reliability Standard, even with modifications, is just, reasonable, not unduly discriminatory or preferential, and in the public interest, considering (among other things) whether it is practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the Bulk Power System, then the Board of Trustees has the authority to direct that the draft Reliability Standard and complete developmental record be filed as a compliance filing in response to the regulatory directive with the Applicable Governmental Authority issuing the regulatory directive, with a recommendation that the draft Reliability Standard not be made effective.
- 5.4 The filing of the Reliability Standard under either paragraph 5.2 or paragraph 5.3 of this Rule shall include an explanation of the basis for the decision by the Board of Trustees.
- 5.5 A Reliability Standard approved under paragraph 5 of this Rule shall not be eligible for submission as an American National Standard.
6. NERC shall on or before March 31st of each year file a report with Applicable Governmental Authorities on the status and timetable for addressing each outstanding directive to address a specific matter received from an Applicable Governmental Authority.

SECTION 400 — COMPLIANCE ENFORCEMENT

401. Scope of the NERC Compliance Monitoring and Enforcement Program

1. **Components of the NERC Compliance Monitoring and Enforcement Program** — NERC shall develop and implement a NERC Compliance Monitoring and Enforcement Program to promote the reliability of the Bulk Power System by enforcing compliance with approved Reliability Standards in those regions of North American in which NERC and/or a Regional Entity (pursuant to a delegation agreement with NERC that has been approved by the Applicable Governmental Authority) has been given enforcement authority. There are four distinct parts of the NERC Compliance Monitoring and Enforcement Program: (1) NERC's oversight of the Regional Entity Compliance Monitoring and Enforcement Programs (Section 402), (2) the definition of the required Regional Entity Compliance Monitoring and Enforcement Program attributes (Section 403), (3) NERC's monitoring of Regional Entity compliance with Reliability Standards (Section 404), and (4) the monitoring of compliance with Reliability Standards that are applicable to NERC (Sections 405–406).
2. **Who Must Comply** — Where required by applicable legislation, regulation, rule or agreement, all Bulk Power System owners, operators, and users, Regional Entities, and NERC, are required to comply with all approved NERC Reliability Standards at all times. Regional Reliability Standards and Variances approved by NERC and the Applicable Governmental Authority shall be considered NERC Reliability Standards and shall apply to all Bulk Power System owners, operators, or users responsible for meeting those Reliability Standards within the Regional Entity boundaries, whether or not the Bulk Power System owner, operator, or user is a member of the Regional Entity.
3. **Data Access** — All Bulk Power System owners, operators, and users shall provide to NERC and the applicable Regional Entity such information as is necessary to monitor compliance with the Reliability Standards. NERC and the applicable Regional Entity will define the data retention and reporting requirements in the Reliability Standards and compliance reporting procedures.
4. **Role of Regional Entities in the Compliance Monitoring and Enforcement Program** — Each Regional Entity that has been delegated authority through a delegation agreement or other legal instrument approved by the Applicable Governmental Authority shall, in accordance with the terms of the approved delegation agreement, administer a Regional Entity Compliance Monitoring and Enforcement program to meet the NERC Compliance Monitoring and Enforcement Program goals and the requirements in this Section 400.
5. **Program Continuity** — NERC will ensure continuity of compliance monitoring and enforcement within the geographic boundaries of a Regional Entity in the event that NERC does not have a delegation agreement, or the Regional Entity withdraws from the agreement or does not operate its Compliance Monitoring and Enforcement Program in accordance with the delegation agreement or other applicable requirements.

- 5.1 Should NERC not have a delegation agreement with a Regional Entity covering a geographic area, or a Regional Entity withdraws from an existing delegation agreement or the delegation agreement is otherwise terminated, NERC will directly administer the Compliance Monitoring and Enforcement Program applicable to owners, operators and users of the Bulk Power System within that geographic area.
 1. This monitoring and enforcement will be accomplished by NERC and Compliance Staff from another approved Regional Entity.
 2. If an existing delegation agreement with a Regional Entity is terminating, the Regional Entity shall promptly provide to NERC all relevant compliance information regarding Registered Entities, contacts, prior compliance information and actions, Mitigation Plans, and Remedial Action Directives for the period in which the Regional Entity was responsible for administering the Compliance Monitoring and Enforcement Program.
 3. NERC will levy and collect all Penalties directly and will utilize any Penalty monies collected to offset the expenses of administering the Compliance Monitoring and Enforcement Program for the geographic area.
- 5.2 Should a Regional Entity seek to withdraw from its delegation agreement, NERC will seek agreement from another Regional Entity to amend its delegation agreement with NERC to extend that Regional Entity's boundaries for compliance monitoring and enforcement. In the event no Regional Entity is willing to accept this responsibility, NERC will administer the Compliance Monitoring and Enforcement Program within the geographical boundaries of the Regional Entity seeking to withdraw from the delegation agreement, in accordance with Section 401.5.1.
6. **Actively Monitored Requirements** — NERC, with input from the Regional entities, stakeholders, and regulators, shall annually select a subset of the NERC Reliability Standards and Requirements to be actively monitored and audited in the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan. Compliance is required, and NERC and the Regional Entities have authority to monitor compliance, 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.
7. **Penalties, Sanctions, and Remedial Action Directives** — NERC and Regional Entities will apply Penalties, sanctions, and Remedial Action Directives that bear a reasonable relation to the seriousness of a violation and take into consideration timely remedial efforts as defined in the NERC *Sanction Guidelines*, which is incorporated into these rules as **Appendix 4B**.
8. **Multiple Enforcement Actions** – A Registered Entity shall not be subject to an enforcement action by NERC and a Regional Entity, 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.

9. **Records** — NERC shall maintain a record of each compliance submission, including Self-Reported, Possible, Alleged, and Confirmed Violations of approved Reliability Standards; associated Penalties, sanctions, Remedial Action Directives and settlements; and the status of mitigation actions.
10. **Confidential Information** — NERC will treat all Possible and Alleged Violations of Reliability Standards and matters related to a Compliance Monitoring and Enforcement Program process, including the status of any Compliance Investigation or other Compliance Monitoring and Enforcement Program process, as confidential in accordance with Section 1500.

The types of information that will be considered confidential and will not (subject to statutory and regulatory requirements) be disclosed in any public information reported by NERC are identified in Section 1500. Information that would jeopardize Bulk Power System reliability, including information relating to a Cyber Security Incident, will be identified and protected from public disclosure as Critical Energy Infrastructure Information in accordance with Section 1500.

The Regional Entity and NERC shall give Bulk Power System owners, operators, and users a reasonable opportunity to demonstrate that information concerning a violation is confidential before such report is disclosed to the public.

11. **Public Posting** — When the affected Bulk Power System owner, operator, or user either agrees with a Possible or Alleged Violation(s) of a Reliability Standard(s) or a report of a Compliance Audit or Compliance Investigation, or enters into a settlement agreement concerning a Possible or Alleged Violation(s), or the time for submitting an appeal is passed, or all appeals processes are complete, NERC shall, subject to the confidentiality requirements of these Rules of Procedure, publicly post each Confirmed Violation, Penalty or sanction, settlement agreement, and final Compliance Audit or Compliance Investigation report, on its website.
 - 11.1 Each Bulk Power System owner, operator, or user may provide NERC with a statement to accompany the Confirmed Violation or report to be posted publicly. The statement must be on company letterhead and include a signature, as well as the name and title of the person submitting the information.
 - 11.2 In accordance with Section 1500, information deemed by a Bulk Power System owner, operator, or user, Regional Entity, or NERC as Critical Energy Infrastructure Information (*NERC Security Guidelines for the Electricity Sector — Protecting Potentially Sensitive Information* may be used as a guide) or other Confidential Information shall be redacted in accordance with Section 1500 and not be released publicly.

- 11.3 Subject to redaction of Critical Energy Infrastructure Information or other Confidential Information, for each Confirmed Violation or settlement relating to a Possible Violation or an Alleged Violation, the public posting shall include the name of any relevant entity, the nature, time period, and circumstances of such Possible, Alleged or Confirmed Violation, any Mitigation Plan or other Mitigating Activities to be implemented by the Registered Entity in connection with the Confirmed Violation or settlement, and sufficient facts to assist owners, operators and users of the Bulk Power System to evaluate whether they have engaged in or are engaging in similar activities.
12. **Violation Information Review** — NERC Compliance Staff shall periodically review and analyze all reports of Possible, Alleged and Confirmed Violations to identify trends and other pertinent reliability issues.
- 402. NERC Oversight of the Regional Entity Compliance Monitoring and Enforcement Programs**
1. **NERC Monitoring Program** — NERC shall have a program to monitor the Compliance Monitoring and Enforcement Program of each Regional Entity that has been delegated authority. The objective of this monitoring program shall be to ensure that the Regional Entity carries out its Compliance Monitoring and Enforcement Program in accordance with these Rules of Procedure and the terms of the delegation agreement, and to ensure consistency and fairness of the Regional Entity's Compliance Monitoring and Enforcement Program. Oversight and monitoring by NERC shall be accomplished through an annual Compliance Monitoring and Enforcement Program review, program audits, and regular evaluations of Regional Entity Compliance Monitoring and Enforcement Program performance as described below.
- 1.1 **NERC Review of Annual Regional Entity Compliance Monitoring and Enforcement Program Implementation Plans** — NERC shall require each Regional Entity to submit for review and approval an annual Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan. NERC shall review each annual Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan and shall accept the plan if it meets NERC requirements and the requirements of the delegation agreement.
- 1.2 **Regional Entity Compliance Monitoring and Enforcement Program Evaluation** — NERC shall annually evaluate the goals, tools, and procedures of each Regional Entity Compliance Monitoring and Enforcement Program to determine the effectiveness of each Regional Entity Compliance Monitoring and Enforcement Program, using criteria developed by the NERC Compliance and Certification Committee.
- 1.3 **Regional Entity Compliance Monitoring and Enforcement Program Audit** — At least once every five years, NERC shall conduct an audit to evaluate how each Regional Entity Compliance Monitoring and

Enforcement Program implements the NERC Compliance Monitoring and Enforcement Program. The evaluation shall be based on these Rules of Procedure, including Appendix 4C, the delegation agreement, directives in effect pursuant to the delegation agreement, approved annual Regional Entity Compliance Monitoring and Enforcement Program Implementation Plans, required Compliance Monitoring and Enforcement Program attributes, and the NERC Compliance Monitoring and Enforcement Program procedures. These evaluations shall be provided to the Applicable Governmental Authorities to demonstrate the effectiveness of each Regional Entity. In addition, audits of Cross-Border Regional Entities shall cover applicable requirements imposed on the Regional Entity by statute, regulation, or order of, or agreement with, provincial governmental and/or regulatory authorities for which NERC has auditing responsibilities over the Regional Entity's compliance with such requirements within Canada or Mexico. Participation of a representative of an Applicable Governmental Authority shall be subject to the limitations of sections 3.1.6 and 8.0 of Appendix 4C of these Rules of Procedure regarding disclosures of non-public compliance information related to other jurisdictions. NERC shall maintain an audit procedure containing the requirements, steps, and timelines to conduct an audit of each Regional Entity Compliance Monitoring and Enforcement Program. The current procedure is contained in the NERC Audit of Regional Entity Compliance Programs, which is incorporated into these rules as **Appendix 4A**.

1.3.1. NERC shall establish a program to audit bulk power system owners, operators, and users operating within a regional entity to verify the findings of previous compliance audits conducted by the regional entity to evaluate how well the regional entity compliance enforcement program is meeting its delegated authority and responsibility.

1.4 Applicable Governmental Authorities will be allowed to participate as an observer in any audit conducted by NERC of a Regional Entity's Compliance Monitoring and Enforcement Program. A representative of the Regional Entity being audited will be allowed to participate in the audit as an observer.

2. **Consistency Among Regional Compliance Monitoring and Enforcement Programs** — To provide for a consistent Compliance Monitoring and Enforcement Program for all Bulk Power System owners, operators, and users required to comply with approved Reliability Standards, NERC shall maintain a single, uniform Compliance Monitoring and Enforcement Program, which is incorporated into these rules of procedure as **Appendix 4C**. Any differences in Regional Entity Compliance Monitoring and Enforcement Program methods, including determination of violations and Penalty assessment, shall be justified on a case-by-case basis and fully documented in each Regional Entity delegation agreement.

- 2.1 NERC shall ensure that each of the Regional Entity Compliance Monitoring and Enforcement Programs meets these Rules of Procedure, including **Appendix 4C**, and follows the terms of the delegation agreement and the approved annual Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan.
- 2.2 NERC shall maintain a single, uniform Compliance Monitoring and Enforcement Program in **Appendix 4C** containing the procedures to ensure the consistency and fairness of the processes used to determine Regional Entity Compliance Monitoring and Enforcement Program findings of compliance and noncompliance, and the application of Penalties and sanctions.
- 2.3 NERC shall periodically conduct Regional Entity compliance manager forums. These forums shall use the results of Regional Entity Compliance Monitoring and Enforcement Program audits and findings of NERC Compliance Staff to identify and refine Regional Entity Compliance Monitoring and Enforcement Program differences into a set of best practices over time.
3. **Information Collection and Reporting** — NERC and the Regional Entities shall implement data management procedures that address data reporting requirements, data integrity, data retention, data security, and data confidentiality.
4. **Violation Disclosure** — NERC shall disclose all Confirmed Violations and maintain as confidential Possible Violations and Alleged Violations, according to the reporting and disclosure process in **Appendix 4C**.
5. **Authority to Determine Noncompliance, Levy Penalties and Sanctions, and Issue Remedial Action Directives** — NERC and Regional Entity Compliance Staff shall have the authority and responsibility to make initial determinations of compliance or noncompliance, and where authorized by the Applicable Governmental Authorities or where otherwise authorized, to determine Penalties and sanctions for noncompliance with a Reliability Standard, and issue Remedial Action Directives. Regional Entity boards or a compliance panel reporting directly to the Regional Entity board will be vested with the authority for the overall Regional Entity Compliance Monitoring and Enforcement Program and have the authority to impose Penalties and sanctions on behalf of NERC, where authorized by applicable legislation or agreement. Remedial Action Directives may be issued by NERC or a Regional Entity that is aware of a Bulk Power System owner, operator, or user that is, or is about to engage in an act or practice that would result, in noncompliance with a Reliability Standard, where such Remedial Action Directive is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat. If, after receiving such a Remedial Action Directive, the Bulk Power System owner, operator, or user does not take appropriate action to avert a violation of a Reliability Standard,

NERC may petition the Applicable Governmental Authority to issue a compliance order.

6. **Due Process** — NERC shall establish and maintain a fair, independent, and nondiscriminatory appeals process. The appeals process is set forth in Sections 408-410. The process shall allow Bulk Power System owners, operators, and users to appeal the Regional Entity's findings of noncompliance and to appeal Penalties, sanctions, and Remedial Action Directives that are levied by the Regional Entity. Appeals beyond the NERC process will be heard by the Applicable Governmental Authority.

The appeals process will also allow for appeals to NERC of any findings of noncompliance issued by NERC to a Regional Entity for Reliability Standards and Requirements where the Regional Entity is monitored for compliance to a Reliability Standard. No monetary Penalties will be levied in these matters; however sanctions, remedial actions, and directives to comply may be applied by NERC.

7. **Conflict Disclosure** — NERC shall disclose to the appropriate governmental authorities any potential conflicts between a market rule and the enforcement of a Regional Reliability Standard.
8. **Confidentiality** — To maintain the integrity of the NERC Compliance Monitoring and Enforcement Program, NERC and Regional Entity staff, Compliance Audit team members, and committee members shall maintain the confidentiality of information obtained and shared during compliance monitoring and enforcement processes including Compliance Investigations, Compliance Audits, Spot Checks, drafting of reports, appeals, and closed meetings.
 - 8.1 NERC and the Regional Entity shall have in place appropriate codes of conduct and confidentiality agreements for staff and other Compliance Monitoring and Enforcement Program participants.
 - 8.2 Individuals not bound by NERC or Regional Entity codes of conduct who serve on compliance-related committees or Compliance Audit teams shall sign a NERC confidentiality agreement prior to participating on the committee or Compliance Audit team.
 - 8.3 Information deemed by a Bulk Power System owner, operator, or user, Regional Entity, or NERC as Critical Energy Infrastructure Information shall not be distributed outside of a committee or team, nor released publicly. Other information subject to confidentiality is identified in Section 1500.
 - 8.4 In the event that a staff, committee, or Compliance Audit team member violates any of the confidentiality rules set forth above, the staff, committee, or Compliance Audit team member and any member organization with which the individual is associated may be subject to

appropriate action by the Regional Entity or NERC, including prohibiting participation in future Compliance Monitoring and Enforcement Program activities.

9. **Auditor Training** — NERC shall develop and provide training in auditing skills to all people who participate in NERC and Regional Entity Compliance Audits. Training for NERC and Regional Entity personnel and others who serve as Compliance Audit team leaders shall be more comprehensive than training given to industry subject matter experts and Regional Entity members. Training for Regional Entity members may be delegated to the Regional Entity.

403. Required Attributes of Regional Entity Compliance Monitoring and Enforcement Programs

Each Regional Entity Compliance Monitoring and Enforcement Program shall promote excellence in the enforcement of Reliability Standards. To accomplish this goal, each Regional Entity Compliance Monitoring and Enforcement Program shall (i) conform to and comply with the NERC uniform Compliance Monitoring and Enforcement Program, **Appendix 4C** to these Rules of Procedure, except to the extent of any deviations that are stated in the Regional Entity's delegation agreement, and (ii) meet all of the attributes set forth in this Section 403.

Program Structure

1. **Independence** — Each Regional Entity's governance of its Compliance Monitoring and Enforcement Program shall exhibit independence, meaning the Compliance Monitoring and Enforcement Program shall be organized so that its compliance monitoring and enforcement activities are carried out separately from other activities of the Regional Entity. The Compliance Monitoring and Enforcement Program shall not be unduly influenced by the Bulk Power System owners, operators, and users being monitored or other Regional Entity activities that are required to meet the Reliability Standards. Regional Entities must include rules providing that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.
2. **Exercising Authority** — Each Regional Entity Compliance Monitoring and Enforcement Program shall exercise the responsibility and authority in carrying out the delegated functions of the NERC Compliance Monitoring and Enforcement Program in accordance with delegation agreements and **Appendix 4C**. These functions include but are not limited to: data gathering, data reporting, Compliance Investigations, Compliance Audit activities, evaluating compliance and noncompliance, imposing Penalties and sanctions, and approving and tracking mitigation actions.
3. **Delegation of Authority** — To maintain independence, fairness, and consistency in the NERC Compliance Monitoring and Enforcement Program, a Regional Entity shall not sub-delegate its Compliance Monitoring and Enforcement Program duties to entities or persons other than the Regional Entity Compliance Staff, unless (i) required by statute or regulation in the applicable jurisdiction, or

- (ii) by agreement with express approval of NERC and of FERC or other Applicable Governmental Authority, to another Regional Entity.
4. **Hearings of Contested Findings or Sanctions** — The Regional Entity board or compliance panel reporting directly to the Regional Entity board (with appropriate recusal procedures) will be vested with the authority for conducting compliance hearings in which any Bulk Power System owner, operator, or user provided a Notice of Alleged Violation may present facts and other information to contest a Notice of Alleged Violation or any proposed Penalty, sanction, any Remedial Action Directive, or any Mitigation Plan component. Compliance hearings shall be conducted in accordance with the Hearing Procedures set forth in Attachment 2 to **Appendix 4C**. If a stakeholder body serves as the Hearing Body, no two industry sectors may control any decision and no single segment may veto any matter related to compliance after recusals.

Program Resources

5. **Regional Entity Compliance Staff** — Each Regional Entity shall have sufficient resources to meet delegated compliance monitoring and enforcement responsibilities, including the necessary professional staff to manage and implement the Regional Entity Compliance Monitoring and Enforcement Program.
6. **Regional Entity Compliance Staff Independence** — The Regional Entity Compliance Staff shall be capable of and required to make all determinations of compliance and noncompliance and determine Penalties, sanctions, and Remedial Action Directives and to review and accept Mitigation Plans and other Mitigating Activities.
- 6.1 Regional Entity Compliance Staff shall not have a conflict of interest, real or perceived, in the outcome of compliance monitoring and enforcement processes, reports, or sanctions. The Regional Entity shall have in effect a conflict of interest policy.
- 6.2 Regional Entity Compliance Staff shall have the authority and responsibility to carry out compliance monitoring and enforcement processes (with the input of industry subject matter experts), make determinations of compliance or noncompliance, and levy Penalties and sanctions without interference or undue influence from Regional Entity members and their representative or other industry entities.
- 6.3 Regional Entity Compliance Staff may call upon independent technical subject matter experts who have no conflict of interest in the outcome of the compliance monitoring and enforcement process to provide technical advice or recommendations in the determination of compliance or noncompliance.
- 6.4 Regional Entity Compliance Staff shall abide by the confidentiality requirements contained in Section 1500 and **Appendix 4C** of these Rules of Procedure, the NERC delegation agreement and other confidentiality

agreements required by the NERC Compliance Monitoring and Enforcement Program.

- 6.5 Contracting with independent consultants or others working for the Regional Entity Compliance Monitoring and Enforcement Program shall be permitted provided the individual has not received compensation from a Bulk Power System owner, operator, or user being monitored for a period of at least the preceding six months and owns no financial interest in any Bulk Power System owner, operator, or user being monitored for compliance to the Reliability Standard, regardless of where the Bulk Power System owner, operator, or user operates. Any such individuals for the purpose of these Rules of Procedure shall be considered as augmenting Regional Entity Compliance Staff.

7. Use of Industry Subject Matter Experts and Regional Entity Members — Industry experts and Regional Entity members may be called upon to provide their technical expertise in Compliance Monitoring and Enforcement Program activities.

- 7.1 The Regional Entity shall have procedures defining the allowable involvement of industry subject matter experts and Regional Entity members. The procedures shall address applicable antitrust laws and conflicts of interest.
- 7.2 Industry subject matter experts and Regional Entity members shall have no conflict of interest or financial interests in the outcome of their activities.
- 7.3 Regional Entity members and industry subject matter experts, as part of teams or Regional Entity committees, may provide input to the Regional Entity Compliance Staff so long as the authority and responsibility for (i) evaluating and determining compliance or noncompliance and (ii) levying Penalties, sanctions, or Remedial Action Directives shall not be delegated to any person or entity other than the Compliance Staff of the Regional Entity. Industry subject matter experts, Regional Entity members, or Regional Entity committees shall not make determinations of noncompliance or levy Penalties, sanctions, or Remedial Action Directives. Any committee involved shall be organized so that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.
- 7.4 Industry subject matter experts and Regional Entity members shall sign a confidentiality agreement appropriate for the activity being performed.
- 7.5 All industry subject matter experts and Regional Entity members participating in Compliance Audits and Compliance Investigations shall successfully complete auditor training provided by NERC or the Regional Entity prior to performing these activities

Program Design

8. **Regional Entity Compliance Monitoring and Enforcement Program Content** — All approved Reliability Standards shall be included in the Regional Entity Compliance Monitoring and Enforcement Program for all Bulk Power System owners, operators, and users within the defined boundaries of the Regional Entity. Compliance to approved Regional Reliability Standards is applicable only within the Region of the Regional Entity that submitted those particular Regional Reliability Standards for approval. NERC will identify the minimum set of Reliability Standards and Requirements to be actively monitored by the Regional Entity in a given year.
9. **Antitrust Provisions** — Each Regional Entity’s Compliance Monitoring and Enforcement Program shall be structured and administered to abide by U.S. antitrust law and Canadian competition law.
10. **Information Submittal** — All Bulk Power System owners, operators, and users within the Regional Entity responsible for complying with Reliability Standards shall submit timely and accurate information when requested by the Regional Entity or NERC. NERC and the Regional Entities shall preserve any mark of confidentiality on information submitted pursuant to Section 1502.1.
 - 10.1 Each Regional Entity has the authority to collect the necessary information to determine compliance and shall develop processes for gathering data from the Bulk Power System owners, operators, and users the Regional Entity monitors.
 - 10.2 The Regional Entity or NERC has the authority to request information from Bulk Power System owners, operators, and users pursuant to Section 401.3 or this Section 403.10 without invoking a specific compliance monitoring and enforcement process in **Appendix 4C**, for purposes of determining whether to pursue one such process in a particular case and/or validating in the enforcement phase of a matter the conclusions reached through the compliance monitoring and enforcement process(es).
 - 10.3 When required or requested, the Regional Entities shall report information to NERC promptly and in accordance with **Appendix 4C** and other NERC procedures.
 - 10.4 Regional Entities shall notify NERC of all Possible, Alleged and Confirmed Violations of NERC Reliability Standards by Registered Entities over which the Regional Entity has compliance monitoring and enforcement authority, in accordance with **Appendix 4C**.
 - 10.5 A Bulk Power System owner, operator, or user found in noncompliance with a Reliability Standard shall submit a Mitigation Plan with a timeline addressing how the noncompliance will be corrected, unless an enforcement process is used that does not require a Mitigation Plan. The

Regional Entity Compliance Staff shall review and accept the Mitigation Plan in accordance with **Appendix 4C**.

10.6 An officer of a Bulk Power System owner, operator, or user shall certify as accurate all compliance data Self-Reported to the Regional Entity Compliance Monitoring and Enforcement Program.

10.7 Regional Entities shall develop and implement procedures to verify the compliance information submitted by Bulk Power System owners, operators, and users.

11. **Compliance Audits of Bulk Power System Owners, Operators, and Users** — Each Regional Entity will maintain and implement a program of proactive Compliance Audits of Bulk Power System owners, operators, and users responsible for complying with Reliability Standards, in accordance with **Appendix 4C**. A Compliance Audit is a process in which a detailed review of the activities of a Bulk Power System owner, operator, or user is performed to determine if that Bulk Power System owner, operator, or user is complying with approved Reliability Standards.

11.1 For an entity registered as a Balancing Authority, Reliability Coordinator, or Transmission Operator, the Compliance Audit will be performed at least once every three years. For other Bulk Power System owners, operators, and users on the NERC Compliance Registry, Compliance Audits shall be performed on a schedule established by NERC.

11.2 Compliance Audits of Balancing Authorities, Reliability Coordinators, and Transmission Operators will include a component at the audited entity's site. For other Bulk Power System owners, operators, and users on the NERC Compliance Registry, the Compliance Audit may be either an on-site Compliance Audit or based on review of documents, as determined to be necessary and appropriate by NERC or Regional Entity Compliance Staff.

11.3 Compliance Audits must include a detailed review of the activities of the Bulk Power System owner, operator, or user to determine if the Bulk Power System owner, operator, or user is complying with all approved Reliability Standards identified for audit by NERC. The Compliance Audit shall include a review of supporting documentation and evidence used by the Bulk Power System owner, operator or user to demonstrate compliance for an appropriate period prior to the Compliance Audit.

12. **Confidentiality of Compliance Monitoring and Enforcement Processes** — All compliance monitoring and enforcement processes, and information obtained from such processes, are to be non-public and treated as confidential in accordance with Section 1500 and **Appendix 4C** of these Rules of Procedure, unless NERC, the Regional Entity or FERC or another Applicable Governmental

Authority with jurisdiction determines a need to conduct a Compliance Monitoring and Enforcement Program process on a public basis, provided, that NERC and the Regional Entities shall publish (i) schedules of Compliance Audits scheduled in each year, (ii) a public report of each Compliance Audit, and (iii) Notices of Penalty and settlement agreements. Advance authorization from the Applicable Governmental Authority is required to make public any compliance monitoring and enforcement process or any information relating to a compliance monitoring and enforcement process, or to permit interventions when determining whether to impose a Penalty. This prohibition on making public any compliance monitoring and enforcement process does not prohibit NERC or a Regional Entity from publicly disclosing (i) the initiation of or results from an analysis of a significant system event under Section 807 or of off-normal events or system performance under Section 808, or (ii) information of general applicability and usefulness to owners, operators, and users of the Bulk Power System concerning reliability and compliance matters, so long as specific allegations or conclusions regarding Possible or Alleged Violations of Reliability Standards are not included in such disclosures.

13. **Critical Energy Infrastructure Information** — Information that would jeopardize Bulk Power System reliability, including information relating to a Cyber Security Incident will be identified and protected from public disclosure as Critical Energy Infrastructure Information. In accordance with Section 1500, information deemed by a Bulk Power System owner, operator, or user, Regional Entity, or NERC as Critical Energy Infrastructure Information shall be redacted according to NERC procedures and shall not be released publicly.
14. **Penalties, Sanctions, and Remedial Action Directives** — Each Regional Entity will apply all Penalties, sanctions, and Remedial Action Directives in accordance with the approved *Sanction Guidelines*, **Appendix 4B** to these Rules of Procedure. Any changes to the *Sanction Guidelines* to be used by any Regional Entity must be approved by NERC and submitted to the Applicable Governmental Authority for approval. All Confirmed Violations, Penalties, and sanctions, including Confirmed Violations, Penalties and sanctions specified in a Regional Entity Hearing Body decision, will be provided to NERC for review and filing with Applicable Governmental Authorities as a Notice of Penalty, in accordance with **Appendix 4C**.
15. **Regional Entity Hearing Process** — Each Regional Entity Compliance Monitoring and Enforcement Program shall establish and maintain a fair, independent, and nondiscriminatory process for hearing contested violations and any Penalties or sanctions levied, in conformance with Attachment 2 to **Appendix 4C** to these Rules of Procedure and any deviations therefrom that are set forth in the Regional Entity's delegation agreement. The hearing process shall allow Bulk Power System owners, operators, and users to contest findings of compliance violations, any Penalties and sanctions that are proposed to be levied, proposed Remedial Action Directives, and components of proposed Mitigation Plans. The Regional Entity hearing process shall be conducted before the Regional Entity

board or a balanced committee established by and reporting to the Regional Entity board as the final adjudicator at the Regional Entity level, provided, that Canadian provincial regulators may act as the final adjudicator in their respective jurisdictions. The Regional Entity hearing process shall (i) include provisions for recusal of any members of the Hearing Body with a potential conflict of interest, real or perceived, from all compliance matters considered by the Hearing Body for which the potential conflict of interest exists and (ii) provide that no two industry sectors may control any decision and no single segment may veto any matter brought before the Hearing Body after recusals.

Each Regional Entity will notify NERC of all hearings and NERC may observe any of the proceedings. Each Regional Entity will notify NERC of the outcome of all hearings.

If a Bulk Power System owner, operator, or user or a Regional Entity has completed the Regional Entity hearing process and desires to appeal the outcome of the hearing, the Bulk Power System owner, operator, or user or the Regional Entity shall appeal to NERC in accordance with Section 409 of these Rules of Procedure, except that a determination of violation or Penalty that has been directly adjudicated by an Applicable Governmental Authority shall be appealed with that Applicable Governmental Authority.

16. **Annual Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan** — Each Regional Entity shall annually develop and submit to NERC for approval a Regional Entity Compliance Monitoring and Enforcement Implementation Plan in accordance with **Appendix 4C** that identifies the Reliability Standards and Requirements to be actively monitored (both those required by NERC and any additional Reliability Standards the Regional Entity proposes to monitor), and how each NERC and Regional Entity identified Reliability Standard will be monitored, evaluated, reported, sanctioned, and appealed. These Regional Implementation Plans will be submitted to NERC on the schedule established by NERC, generally on or about October 1 of the preceding year. In conjunction with the annual Regional Implementation Plan, each Regional Entity must report to NERC regarding how it carried out its delegated compliance monitoring and enforcement authority in the previous year, the effectiveness of the Compliance Monitoring and Enforcement Program, and changes expected to correct any deficiencies identified. Each Regional Entity will provide its annual report on the schedule established by NERC, generally on or about February 15 of the following year.

404. NERC Monitoring of Compliance for Regional Entities or Bulk Power Owners, Operator, or Users

NERC shall monitor Regional Entity compliance with NERC Reliability Standards and, if no there is no delegation agreement in effect with a Regional Entity for the geographic area, shall monitor Bulk Power System owners, operators, and users for compliance with NERC Reliability Standards. Industry subject matter experts may be used as appropriate in Compliance Investigations, Compliance Audits, and other Compliance Monitoring and

Enforcement Program activities, subject to confidentiality, antitrust, and conflict of interest provisions.

1. **NERC Obligations** — NERC Compliance Staff shall monitor the compliance of the Regional Entity with the Reliability Standards for which the Regional Entities are responsible, in accordance with **Appendix 4C**. NERC shall actively monitor in its annual Compliance Enforcement and Monitoring Program selected Reliability Standards that apply to the Regional Entities. NERC shall evaluate compliance and noncompliance with all of the Reliability Standards that apply to the Regional Entities and shall impose sanctions, Penalties, or Remedial Action Directives when there is a finding of noncompliance. NERC shall post all violations of Reliability Standards that apply to the Regional Entities as described in the reporting and disclosure process in **Appendix 4C**.

In addition, NERC will directly monitor Bulk Power System owners, operators, and users for compliance with NERC Reliability Standards in any geographic area for which there is not a delegation agreement in effect with a Regional Entity, in accordance with **Appendix 4C**. In such cases, NERC will serve as the Compliance Enforcement Authority described in **Appendix 4C**. Compliance matters contested by Bulk Power System owners, operators, and users in such an event will be heard by the NERC Compliance and Certification Committee.

2. **Compliance Audit of the Regional Entity** — NERC shall perform a Compliance Audit of each Regional Entity responsible for complying with Reliability Standards at least once every three years. NERC shall make an evaluation of compliance based on the information obtained through the Compliance Audit. After due process is complete, the final Compliance Audit report shall be made public in accordance with the reporting and disclosure process in **Appendix 4C**.
3. **Appeals Process** — Any Regional Entity or Bulk Power System owner, operator or user found by NERC, as opposed to a Regional Entity, to be in noncompliance with a Reliability Standard may appeal the findings of noncompliance with Reliability Standards and any sanctions or Remedial Action Directives that are issued by, or Mitigation Plan components imposed by, NERC, pursuant to the processes described in Sections 408 through 410.

405. Monitoring of Reliability Standards and Other Requirements Applicable to NERC

The NERC Compliance and Certification Committee shall establish and implement a process to monitor NERC's compliance with the Reliability Standards that apply to NERC. The process shall use independent monitors with no conflict of interest, real or perceived, in the outcomes of the process. All violations shall be made public according to the reporting and disclosure process in **Appendix 4C**. The Compliance and Certification Committee will also establish a procedure for monitoring NERC's compliance with its Rules of Procedure for the Standards Development, Compliance Monitoring and Enforcement, and Organization Registration and Certification Programs. Such procedures shall not be used to circumvent the appeals processes established for those programs.

406. Independent Audits of the NERC Compliance Monitoring and Enforcement Program

NERC shall provide for an independent audit of its Compliance Monitoring and Enforcement Program at least once every three years, or more frequently as determined by the Board. The audit shall be conducted by independent expert auditors as selected by the Board. The independent audit shall meet the following minimum requirements and any other requirements established by the NERC Board.

1. **Effectiveness** — The audit shall evaluate the success and effectiveness of the NERC Compliance Monitoring and Enforcement Program in achieving its mission.
2. **Relationship** — The audit shall evaluate the relationship between NERC and the Regional Entity Compliance Monitoring and Enforcement Programs and the effectiveness of the programs in ensuring reliability.
3. **Final Report Posting** — The final report shall be posted by NERC for public viewing in accordance with **Appendix 4C**.
4. **Response to Recommendations** — If the audit report includes recommendations to improve the NERC Compliance Monitoring and Enforcement Program, the administrators of the NERC Compliance Monitoring and Enforcement Program shall provide a written response and plan to the Board within 30 days of the release of the final audit report.

407. Penalties, Sanctions, and Remedial Action Directives

1. **NERC Review of Regional Entity Penalties and Sanctions** — NERC shall review all Penalties, sanctions, and Remedial Action Directives imposed by each Regional Entity for violations of Reliability Standards, including Penalties, sanctions and Remedial Action Directives that are specified by a Regional Entity Hearing Body final decision issued pursuant to Attachment 2 to **Appendix 4C**, to determine if the Regional Entity's determination is supported by a sufficient record compiled by the Regional Entity, is consistent with the *Sanction Guidelines* incorporated into these Rules of Procedure as **Appendix 4B** and with other directives, guidance and directions issued by NERC pursuant to the delegation agreement, and is consistent with Penalties, sanctions and Remedial Action Directives imposed by the Regional Entity and by other Regional Entities for violations involving the same or similar facts and circumstances.
2. **Developing Penalties and Sanctions** — The Regional Entity Compliance Staff shall use the *Sanction Guidelines*, which are incorporated into these Rules of Procedure as **Appendix 4B**, to develop an appropriate Penalty, sanction, or Remedial Action Directive for a violation, and shall notify NERC of the Penalty, sanction or Remedial Action Directive.
3. **Effective Date of Penalty** — Where authorized by applicable legislation or agreement, no Penalty imposed for a violation of a Reliability Standard shall take effect until the thirty-first day after NERC files, with the Applicable

Governmental Authority, a “Notice of Penalty” and the record of the proceedings in which the violation and Penalty were determined, or such other date as ordered by the Applicable Governmental Authority.

408. Review of NERC Decisions

1. **Scope of Review** — A Registered Entity or a Regional Entity wishing to challenge a finding of noncompliance and the imposition of a Penalty for a compliance measure directly administered by NERC, or a Regional Entity wishing to challenge a Regional Entity Compliance Monitoring and Enforcement Program audit finding, may do so by filing a notice of the challenge with NERC’s director of enforcement no later than 21 days after issuance of the notice of finding of violation or audit finding. Appeals by Registered Entities or Regional Entities of decisions of Regional Entity Hearing Bodies shall be pursuant to Section 409.
2. **Contents of Notice** — The notice of challenge shall include the full text of the decision that is being challenged, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief.
3. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of challenge, the NERC director of enforcement may file with the Hearing Panel a response to the issues raised in the notice, with a copy to the Regional Entity.
4. **Hearing by Compliance and Certification Committee** — The NERC Compliance and Certification Committee shall provide representatives of the Regional Entity or Registered Entity, and the NERC Compliance Monitoring and Enforcement Program an opportunity to be heard and shall decide the matter based upon the filings and presentations made, with a written explanation of its decision.
5. **Appeal** — The Regional Entity or Registered Entity may appeal the decision of the Compliance and Certification Committee by filing a notice of appeal with NERC’s director of enforcement no later than 21 days after issuance of the written decision by the Compliance and Certification Committee. The notice of appeal shall include the full text of the written decision of the Compliance and Certification Committee that is being appealed, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not presented to the Compliance and Certification Committee.
6. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of appeal, the NERC Compliance Monitoring and Enforcement Program staff may file its response to the issues raised in the notice of appeal, with a copy to the entity filing the notice.

7. **Reply** — The entity filing the appeal may file a reply within 7 days.
8. **Decision** — The Compliance Committee of the NERC Board of Trustees shall decide the appeal, in writing, based upon the notice of appeal, the record, the response, and any reply. At its discretion, the Compliance Committee may invite representatives of the Regional Entity or Registered Entity, and the NERC Compliance Monitoring and Enforcement Program to appear before the Compliance Committee. Decisions of the Compliance Committee shall be final, except for further appeal to the Applicable Governmental Authority.
9. **Impartiality** — No member of the Compliance and Certification Committee or the Board of Trustees Compliance Committee having an actual or perceived conflict of interest in the matter may participate in any aspect of the challenge or appeal except as a party or witness.
10. **Expenses** — Each party in the challenge and appeals processes shall pay its own expenses for each step in the process.
11. **Non-Public Proceedings** — All challenges and appeals shall be closed to the public to protect Confidential Information.

409. Appeals from Final Decisions of Regional Entity Hearing Bodies

1. **Time for Appeal** — A Regional Entity acting as the Compliance Enforcement Authority, or an owner, operator or user of the Bulk Power System, shall be entitled to appeal from a final decision of a Regional Entity Hearing Body concerning an Alleged Violation of a Reliability Standard, a proposed Penalty or sanction for violation of a Reliability Standard, a proposed Mitigation Plan, or a proposed Remedial Action Directive, by filing a notice of appeal with NERC's director of enforcement, with copies to the Regional Entity and any other Participants in the Regional Entity Hearing Body proceeding, no later than 21 days after issuance of the final decision of the Regional Entity Hearing Body.
2. **Contents** — The notice of appeal shall include the full text of the final decision of the Regional Entity Hearing Body that is being appealed, a concise statement of the error or errors contained in the final decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not first presented during the proceeding before the Regional Entity Hearing Body.
3. **Response to Notice of Appeal** — Within 21 days after the date the notice of appeal is filed, the Regional Entity shall file the entire record of the Regional Entity Hearing Body proceeding with NERC's director of enforcement. Within 35 days after the date of the notice of appeal, all Participants in the proceeding before the Regional Entity Hearing Body, other than the Participant filing the notice of appeal, shall file their responses to the issues raised in the notice of appeal.

4. **Reply** — The Registered Entity filing the appeal may file a reply to the responses within 7 days.
5. **Decision** — The Compliance Committee of the NERC Board of Trustees shall decide the appeal, in writing, based upon the notice of appeal, the record of the proceeding before the Regional Entity Hearing Body, the responses, and any reply filed with NERC. At its discretion, the Compliance Committee may invite representatives of the entity making the appeal and the other Participants in the proceeding before the Regional Entity Hearing Body to appear before the Committee. Decisions of the Compliance Committee shall be final, except for further appeal to the Applicable Governmental Authority.
6. **Expenses** — Each party in the appeals process shall pay its own expenses for each step in the process.
7. **Non-Public Proceedings** — All appeals shall be closed to the public to protect Confidential Information.
8. **Appeal of Hearing Body Decisions Granting or Denying Motions to Intervene** — This section is not applicable to an appeal of a decision of a Regional Entity Hearing Body granting or denying a motion to intervene in the Regional Entity Hearing Body proceeding. Appeals of decisions of Regional Entity Hearing Bodies granting or denying motions to intervene in Regional Entity Hearing Body proceedings shall be processed and decided pursuant to Section 414.

410. Hold Harmless

A condition of invoking the challenge or appeals processes under Section 408 or 409 is that the entity requesting the challenge or appeal agrees that neither NERC (defined to include its Members, Board of Trustees, committees, subcommittees, staff and industry subject matter experts), any person assisting in the challenge or appeals processes, nor any company employing a person assisting in the challenge or appeals processes, shall be liable, and they shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the challenge or appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.

411. Requests for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Reliability Standards

A Registered Entity that is subject to an Applicable Requirement of a NERC Critical Infrastructure Protection Standard for which Technical Feasibility Exceptions are permitted, may request a Technical Feasibility Exception to the Requirement, and the request will be reviewed, approved or disapproved, and if approved, implemented, in accordance with the NERC *Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standard*, Appendix 4D to these Rules of Procedure.

412. Certification of Questions from Regional Entity Hearing Bodies for Decision by the NERC Board of Trustees Compliance Committee

1. A Regional Entity Hearing Body that is conducting a hearing concerning a disputed compliance matter pursuant to Attachment 2, Hearing Procedures, of Appendix 4C, may certify to the 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 hearing in whole or in part, and as to which there are other extraordinary circumstances that make prompt consideration of the question by the Compliance Committee appropriate, in accordance with Section 1.5.12 of the Hearing Procedures. All questions certified by a Regional Entity Hearing Body to the Board of Trustees shall be considered and disposed of by the Compliance Committee.
2. The Compliance Committee may accept or reject a certification of a question for decision. If the Compliance Committee rejects the certified question, it shall issue a written statement that the certification is rejected.
3. If the Compliance Committee accepts the certification of a question for decision, it shall establish a schedule by which the Participants in the hearing before the Regional Entity Hearing Body may file memoranda and reply memoranda stating their positions as to how the question certified for decision should be decided by the Compliance Committee. The Compliance Committee may also request, or provide an opportunity for, the NERC compliance operations department, the NERC compliance enforcement department, and/or the NERC general counsel to file memoranda stating their positions as to how the question certified for decision should be decided. After receiving such memoranda and reply memoranda as are filed in accordance with the schedule, the Compliance Committee shall issue a written decision on the certified question.
4. Upon receiving the Compliance Committee's written decision on the certified question, the Regional Entity Hearing Body shall proceed to complete the hearing in accordance with the Compliance Committee's decision.
5. The Compliance Committee's decision, if any, on the certified question shall only be applicable to the hearing from which the question was certified and to the Participants in that hearing.

413. Review and Processing of Regional Entity Hearing Body Final Decisions that Are Not Appealed

NERC shall review and process all final decisions of Regional Entity Hearing Bodies issued pursuant to Attachment 2 to Appendix 4C concerning an Alleged Violation, proposed Penalty or sanction, or proposed Mitigation Plan that are not appealed pursuant to Section 409, as though the determination had been made by the Regional Entity Compliance Monitoring and Enforcement Program. NERC shall review and process such final decisions, and may require that they be modified by the Regional Entity, in

accordance with, as applicable to the particular decision, Sections 5.8, 5.9 and 6.5 of Appendix 4C.

414. Appeals of Decisions of Regional Entity Hearing Bodies Granting or Denying Motions to Intervene in Regional Entity Hearing Body Proceedings

1. **Time to Appeal** — An entity may appeal a decision of a Regional Entity Hearing Body under Section 1.4.4 of Attachment 2 of **Appendix C** denying the entity's motion to intervene in a Regional Entity Hearing Body proceeding, and the Regional Entity Compliance Staff or any other Participant in the Regional Entity Hearing Body proceeding may appeal a decision of the Regional Entity Hearing Body under Section 1.4.4 of Attachment 2 of **Appendix C** granting or denying a motion to intervene in the Regional Entity Hearing Body proceeding, in either case by filing a notice of appeal with the NERC director of enforcement, with copies to the Regional Entity Clerk, the Regional Entity Hearing body, the Hearing Officer, the Regional Entity Compliance Staff, and all other Participants in the Regional Entity Hearing Body proceeding, no later than seven (7) days following the date of the Regional Entity Hearing Body decision granting or denying the motion to intervene.
2. **Contents of Notice of Appeal** — The notice of appeal shall set forth information and argument to demonstrate that the decision of the Regional Entity Hearing Body granting or denying the motion to intervene was erroneous under the grounds for intervention specified in Section 1.4.4 of Attachment 2 of **Appendix 4C** and that the entity requesting intervention should be granted or denied intervention, as applicable. Facts alleged in, and any offers of proof made in, the notice of appeal shall be supported by affidavit or verification. The notice of appeal shall include a copy of the original motion to intervene and a copy of the decision of the Regional Entity Hearing Body granting or denying the motion to intervene.
3. **Responses to Notice of Appeal** — Within ten (10) days following the date the notice of appeal is filed, the Regional Entity Clerk shall transmit to the NERC director of enforcement copies of all pleadings filed in the Regional Entity Hearing Body proceeding on the motion to intervene. Within fourteen (14) days following the date the notice of appeal is filed, the Regional Entity Hearing Body, the Regional Entity Compliance Staff, and any other Participants in the Regional Entity Hearing Body proceeding, may each file a response to the notice of appeal with the NERC director of enforcement. Within seven (7) days following the last day for filing responses, the entity filing the notice of appeal, and any Participant in the Regional Entity Hearing Body proceeding that supports the appeal, may file replies to the responses with the NERC director of enforcement.
4. **Disposition of Appeal** — The appeal shall be considered and decided by the Compliance Committee. The NERC director of enforcement shall provide copies of the notice of appeal and any responses and replies to the Compliance Committee. The Compliance Committee shall issue a written decision on the

appeal; provided, that if the Compliance Committee does not issue a written decision on the appeal within forty-five (45) days following the date of filing the notice of appeal, the appeal shall be deemed denied and the decision of the Regional Entity Hearing Body granting or denying the motion to intervene shall stand. The NERC director of enforcement shall transmit copies of the Compliance Committee's decision, or shall provide notice that the forty-five (45) day period has expired with no decision by the Compliance Committee, to the Regional Entity Clerk, the Regional Entity Hearing Body, the entity filing the notice of appeal, the Regional Entity Compliance Staff, and any other Participants in the Regional Entity Hearing Body proceeding that filed responses to the notice of appeal or replies to responses.

5. **Appeal of Compliance Committee Decision to FERC or Other Applicable Governmental Authority** — Any entity aggrieved by the decision of the Compliance Committee on an appeal of a Regional Entity Hearing Body decision granting or denying a motion to intervene in a Regional Entity Hearing Body proceeding (including a denial of such appeal by the expiration of the forty-five (45) day period as provided in Section 414.4) may appeal or petition for review of the decision of the Compliance Committee to FERC or to another Applicable Governmental Authority having jurisdiction over the matter, in accordance with the authorities, rules and procedures of FERC or such other Applicable Governmental Authority. Any such appeal or petition for review shall be filed within the time period, if any, and in the form and manner, specified by the applicable statutes, rules or regulations governing proceedings before FERC or the other Applicable Governmental Authority.

SECTION 500 — ORGANIZATION REGISTRATION AND CERTIFICATION

501. Scope of the Organization Registration and Organization Certification Programs

The purpose of the Organization Registration Program is to clearly identify those entities that are responsible for compliance with the FERC approved Reliability Standards. Organizations that are registered are included on the NERC Compliance Registry (NCR) and are responsible for knowing the content of and for complying with all applicable Reliability Standards. Registered Entities are not and do not become Members of NERC or a Regional Entity, by virtue of being listed on the NCR. Membership in NERC is governed by Article II of NERC's Bylaws; membership in a Regional Entity or regional reliability organization is governed by that entity's bylaws or rules.

The purpose of the Organization Certification Program is to ensure that the new entity (i.e., applicant to be an RC, BA, or TOP that is not already performing the function for which it is applying to be certified as) has the tools, processes, training, and procedures to demonstrate their ability to meet the Requirements/sub-Requirements of all of the Reliability Standards applicable to the function(s) for which it is applying thereby demonstrating the ability to become certified and then operational.

Organization Registration and Organization Certification may be delegated to Regional Entities in accordance with the procedures in this Section 500; the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into these Rules of Procedure as **Appendix 5A**; and, approved Regional Entity delegation agreements or other applicable agreements.

1. **NERC Compliance Registry** — NERC shall establish and maintain the NCR of the Bulk Power System owners, operators, and users that are subject to approved Reliability Standards.
 - 1.1 (a) The NCR shall set forth the identity and functions performed for each organization responsible for meeting Requirements/sub-Requirements of the Reliability Standards. Bulk Power System owners, operators, and users (i) shall provide to NERC and the applicable Regional Entity information necessary to complete the Registration, and (ii) shall provide NERC and the applicable Regional Entity with timely updates to information concerning the Registered Entity's ownership, operations, contact information, and other information that may affect the Registered Entity's Registration status or other information recorded in the Compliance Registry.
 - (b) A generation or transmission cooperative, a joint-action agency or another organization may register as a Joint Registration Organization (JRO), in lieu of each of the JRO's members or related entities being registered individually for one or more functions. Refer to Section 507.

(c) Multiple entities may each register using a Coordinated Functional Registration (CFR) for one or more Reliability Standard(s) and/or for one or more Requirements/sub-Requirements within particular Reliability Standard(s) applicable to a specific function pursuant to a written agreement for the division of compliance responsibility. Refer to Section 508.

- 1.2 In the development of the NCR, NERC and the Regional Entities shall determine which organizations should be placed on the NCR based on the criteria provided in the NERC *Statement of Compliance Registry Criteria* which is incorporated into these Rules of Procedure as **Appendix 5B**.
- 1.3 NERC and the Regional Entities shall use the following rules for establishing and maintaining the NCR based on the Registration criteria as set forth in **Appendix 5B** *Statement of Compliance Registry Criteria*:
 - 1.3.1 NERC shall notify each organization that it is on the NCR. The Registered Entity is responsible for compliance with all the Reliability Standards applicable to the functions for which it is registered from the time it receives the Registration notification from NERC.
 - 1.3.2 Any organization receiving such a notice may challenge its placement on the NCR according to the process in **Appendix 5A** *Organization Registration and Organization Certification Manual*, Section V.
 - 1.3.3 The Compliance Committee of the Board of Trustees shall promptly issue a written decision on the challenge, including the reasons for the decision.
 - 1.3.4 The decision of the Compliance Committee of the Board of Trustees shall be final unless, within 21 days of the date of the Compliance Committee of the Board of Trustees decision, the organization appeals the decision to the Applicable Governmental Authority.
 - 1.3.5 Each Registered Entity identified on the NCR shall notify its corresponding Regional Entity(s) of any corrections, revisions, deletions, changes in ownership, corporate structure, or similar matters that affect the Registered Entity's responsibilities with respect to the Reliability Standards. Failure to notify will not relieve the Registered Entity from any responsibility to comply with the Reliability Standards or shield it from any Penalties or sanctions associated with failing to comply with the Reliability Standards applicable to its associated Registration.

- 1.4 For all geographical or electrical areas of the Bulk Power System, the Registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and required by the Reliability Standards to the fullest extent practical, and (2) there is no unnecessary duplication of such coverage or of required oversight of such coverage. In particular the process shall:
 - 1.4.1 Ensure that all areas are under the oversight of one and only one Reliability Coordinator.
 - 1.4.2 Ensure that all Balancing Authorities and Transmission Operator entities² are under the responsibility of one and only one Reliability Coordinator.
 - 1.4.3 Ensure that all transmission Facilities of the Bulk Power System are the responsibility and under the control of one and only one Transmission Planner, Planning Authority, and Transmission Operator.
 - 1.4.4 Ensure that all Loads and generators are under the responsibility and control of one and only one Balancing Authority.
- 1.5 NERC shall maintain the NCR of organizations responsible for meeting the Requirements/sub-Requirements of the Reliability Standards currently in effect on its website and shall update the NCR monthly.
2. **Entity Certification** — NERC shall provide for Certification of all entities with primary reliability responsibilities requiring Certification. This includes those entities that satisfy the criteria established in the NERC provisional Certification process. The NERC programs shall:
 - 2.1 Evaluate and certify the competency of entities performing reliability functions. The entities presently expected to be certified include Reliability Coordinators, Transmission Operators, and Balancing Authorities.
 - 2.2 Evaluate and certify each applicant's ability to meet the requirements for Certification.
 - 2.3 Maintain process documentation.
 - 2.4 Maintain records of currently certified entities.

² Some organizations perform the listed functions (e.g., Balancing Authority, Transmission Operator) over areas that transcend the Footprints of more than one Reliability Coordinator. Such organizations will have multiple Registrations, with each such Registration corresponding to that portion of the organization's overall area that is within the Footprint of a particular Reliability Coordinator.

- 2.5 Issue a Certification document to the applicant that successfully demonstrates its competency to perform the evaluated functions.

3. Delegation and Oversight

- 3.1 NERC may delegate responsibilities for Organization Registration and Organization Certification to Regional Entities in accordance with requirements established by NERC. Delegation will be via the delegation agreement between NERC and the Regional Entity or other applicable agreement. The Regional Entity shall administer Organization Registration and Organization Certification Programs in accordance with such delegations to meet NERC's programs goals and requirements subject to NERC oversight.
- 3.2 NERC shall develop and maintain a plan to ensure the continuity of Organization Registration and Organization Certification within the geographic or electrical boundaries of a Regional Entity in the event that no entity is functioning as a Regional Entity for that Region, or the Regional Entity withdraws as a Regional Entity, or does not operate its Organization Registration and Organization Certification Programs in accordance with delegation agreements.
- 3.3 NERC shall develop and maintain a program to monitor and oversee the NERC Organization Registration and Organization Certification Programs activities that are delegated to each Regional Entity through a delegation agreement or other applicable agreement.
 - 3.3.1 This program shall monitor whether the Regional Entity carries out those delegated activities in accordance with NERC requirements, and whether there is consistency, fairness of administration, and comparability.
 - 3.3.2 Monitoring and oversight shall be accomplished through direct participation in the Organization Registration and Organization Certification Programs with periodic reviews of documents and records of both programs.

502. Organization Registration and Organization Certification Program Requirements

1. NERC shall maintain the Organization Registration and Organization Certification Programs.
 - 1.1 The roles and authority of Regional Entities in the programs are delegated from NERC pursuant to the Rules of Procedure through regional delegation agreements or other applicable agreements.

- 1.2 Processes for the programs shall be administered by NERC and the Regional Entities. Materials that each Regional Entity uses are subject to review and approval by NERC.
 - 1.3 The appeals process for the Organization Registration and Organization Certification Programs are identified in **Appendix 5A** *Organization Registration and Organization Certification Manual*, Sections V and VI, respectively.
 - 1.4 The Certification Team membership is identified in **Appendix 5A** *Organization Registration and Organization Certification Manual*, Section IV.8.d.
2. To ensure consistency and fairness of the Organization Registration and Organization Certification Programs, NERC shall develop procedures to be used by all Regional Entities and NERC in accordance with the following criteria:
- 2.1 NERC and the Regional Entities shall have data management processes and procedures that provide for confidentiality, integrity, and retention of data and information collected.
 - 2.2 Documentation used to substantiate the conclusions of the Regional Entity/ NERC related to Registration and/or Certification must be retained by the Regional Entity for (6) six years, unless a different retention period is otherwise identified, for the purposes of future audits of these programs.
 - 2.3 To maintain the integrity of the NERC Organization Registration and Organization Certification Programs, NERC, Regional Entities, Certification Team members, program audit team members (Section 506), and committee members shall maintain the confidentiality of information provided by an applicant or entities.
 - 2.2.1 NERC and the Regional Entities shall have appropriate codes of conduct and confidentiality agreements for staff, Certification Team, Certification related committees, and Certification program audit team members.
 - 2.2.2 NERC, Regional Entities, Certification Team members, program audit team members and committee members shall maintain the confidentiality of any Registration or Certification-related discussions or documents designated as confidential (see Section 1500 for types of Confidential Information).
 - 2.2.3 NERC, Regional Entities, Certification Team members, program audit team members and committee members shall treat as confidential the individual comments expressed during evaluations, program audits and report-drafting sessions.

- 2.2.4 Copies of notes, draft reports, and other interim documents developed or used during an entity Certification evaluation or program audit shall be destroyed after the public posting of a final, uncontested report.
- 2.2.5 Information deemed by an applicant, entity, a Regional Entity, or NERC as confidential, including Critical Energy Infrastructure Information, shall not be released publicly or distributed outside of a committee or team.
- 2.2.6 In the event that an individual violates any of the confidentiality rules set forth above, that individual and any member organization with which the individual is associated will be subject to immediate dismissal from the audit team and may be prohibited from future participation in Compliance Monitoring and Enforcement Program activities by the Regional Entity or NERC.
- 2.2.7 NERC shall develop and provide training in auditing skills to all individuals prior to their participation in Certification evaluations. Training for Certification Team leaders shall be more comprehensive than the training given to industry subject matter experts and Regional Entity members. Training for Regional Entity members may be delegated to the Regional Entity.
- 2.4 An applicant that is determined to be competent to perform a function after completing all Certification requirements shall be deemed certified by NERC to perform that function for which it has demonstrated full competency.

2.4.1 All NERC certified entities shall be included on the NCR.

503. Regional Entity Implementation of Organization Registration and Organization Certification Program Requirements

- 1. **Delegation** — Recognizing the Regional Entity’s knowledge of and experience with their members, NERC may delegate responsibility for Organization Registration and Organization Certification to the Regional Entity through a delegation agreement.
- 2. **Registration** — The following Organization Registration activities shall be managed by the Regional Entity per the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into the Rules of Procedure as Appendix 5A *Organization Registration and Organization Certification Manual*:
 - 2.1 Regional Entities shall verify that all Reliability Coordinators, Balancing Authorities, and Transmission Operators meet the Registration requirements of Section 501(1.4).

3. **Certification** — The following Organization Certification activities shall be managed by the Regional Entity in accordance with an approved delegation agreement or another applicable agreement:
 - 3.1 An entity seeking Certification to perform one of the functions requiring Certification shall contact the Regional Entity for the Region(s) in which it plans to operate to apply for Certification.
 - 3.2 An entity seeking Certification and other affected entities shall provide all information and data requested by NERC or the Regional Entity to conduct the Certification process.
 - 3.3 Regional Entities shall notify NERC of all Certification applicants.
 - 3.4 NERC and/or the Regional Entity shall evaluate the competency of entities requiring Certification to meet the NERC Certification requirements.
 - 3.5 NERC or the Regional Entity shall establish Certification procedures to include evaluation processes, schedules and deadlines, expectations of the applicants and all entities participating in the evaluation and Certification processes, and requirements for Certification Team members.
 - 3.5.1 The NERC / Regional Entity Certification procedures will include provisions for on-site visits to the applicant’s facilities to review the data collected through questionnaires, interviewing the operations and management personnel, inspecting the facilities and equipment (including requesting a demonstration of all tools identified in the Certification process), reviewing all necessary documents and data (including all agreements, processes, and procedures identified in the Certification process), reviewing Certification documents and projected system operator work schedules, and reviewing any additional documentation needed to support the completed questionnaire or inquiries arising during the site visit.
 - 3.5.2 The NERC/ Regional Entity Certification procedures will provide for preparation of a written report by the Certification Team, detailing any deficiencies that must be resolved prior to granting Certification, along with any other recommendations for consideration by the applicant, the Regional Entity, or NERC.

504. Appeals

1. NERC shall maintain an appeals process to resolve any disputes related to Registration or Certification activities per the *Organization Registration and Organization Certification Manual*, which is incorporated in these Rules of Procedure as Appendix 5A.

2. The Regional Entity Certification appeals process shall culminate with the Regional Entity board or a committee established by and reporting to the Regional Entity board as the final adjudicator, provided that where applicable, Canadian provincial governmental authorities may act as the final adjudicator in their jurisdictions. NERC shall be notified of all appeals and may observe any proceedings (**Appendix 5A** *Organization Registration and Organization Certification Manual*).

505. Program Maintenance

NERC shall maintain its program materials, including such manuals or other documents as it deems necessary, of the governing policies and procedures of the Organization Registration and Organization Certification Programs.

506. Independent Audit of NERC Organization Registration and Organization Certification Program

1. NERC, through the Compliance and Certification Committee, shall provide for an independent audit of its Organization Registration and Organization Certification Programs at least once every three years, or more frequently, as determined by the Board. The audit shall be conducted by independent expert auditors as selected by the Board.
2. The audit shall evaluate the success, effectiveness and consistency of the NERC Organization Registration and Organization Certification Programs.
3. The final report shall be posted by NERC for public viewing.
4. If the audit report includes recommendations to improve the program, the administrators of the program shall provide a written response to the Board within 30 days of the final report, detailing the disposition of each and every recommendation, including an explanation of the reasons for rejecting a recommendation and an implementation plan for the recommendations accepted.

507. Provisions Relating to Joint Registration Organizations (JRO)

1. In addition to registering as the entity responsible for all functions that it performs itself, an entity may register as a JRO on behalf of one or more of its members or related entities for one or more functions for which such members or related entities would otherwise be required to register and, thereby, accept on behalf of such members or related entities all compliance responsibility for that function or those functions including all reporting requirements. Any entity seeking to register as a JRO must submit a written agreement with its members or related entities for all Requirements/sub-Requirements for the function(s) for which the entity is registering for and takes responsibility for, which would otherwise be the responsibility of one or more of its members or related entities. Neither NERC nor

the Regional Entity shall be parties to any such agreement, nor shall NERC or the Regional Entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the JRO Registration.

2. The JRO Registration data must include the same Registration information as a normal compliance Registration entry. The JRO is responsible for providing all of the information and data, including submitting reports, as needed by the Regional Entity for performing assessments of compliance.
3. The Regional Entity shall notify NERC of each JRO that the Regional Entity accepts. The notification will identify the point of contact and the function(s) being registered for on behalf of its members or related entities.
4. For purposes of Compliance Audits, the Regional Entity shall keep a list of all JROs. This document shall contain a list of each JRO's members or related entities and the function(s) for which the JRO is registered for that member(s) or related entity(s). It is the responsibility of the JRO to provide the Regional Entity with this information as well as the applicable JRO agreement(s).
5. The Regional Entity may request clarification of any list submitted to it that identifies the members of the JRO and may request such additional information as the Regional Entity deems appropriate.
6. The Regional Entity's acceptance of a JRO shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded the JRO will meet the Registration requirements of Section 501(1.4).
7. NERC shall maintain, and post on its website, a JRO registry listing all JRO Registrations that have been reviewed and accepted by the Regional Entity. The posting shall identify the JRO entity taking compliance responsibilities for itself and its members.
8. The JRO shall inform the Regional Entity of any changes to an existing JRO. The Regional Entity shall promptly notify NERC of each such revision.
9. Nothing in Section 507 shall preclude a member of a JRO, a related entity, or any other entity from registering on its own behalf and undertaking full compliance responsibility including reporting Requirements for the Reliability Standards applicable to the function(s) for which the member or other entity is registering. A JRO member or related entity that registers as responsible for any Reliability Standard or Requirement/sub-Requirement of a Reliability Standard shall inform the JRO of its Registration.

508. Provisions Relating to Coordinated Functional Registration (CFR) Entities

1. In addition to registering as an entity responsible for all functions that it performs itself, multiple entities may each register using a CFR for one or more Reliability

Standard(s) and/or for one or more Requirements/sub-Requirements within particular Reliability Standard(s) applicable to a specific function. The CFR submission must include a written agreement that governs itself and clearly specifies the entities' respective compliance responsibilities. The Registration of the CFR is the complete Registration for each entity. Additionally, each entity shall take full compliance responsibility for those Reliability Standards and/or Requirements/sub-Requirements it has registered for in the CFR. Neither NERC nor the Regional Entity shall be parties to any such agreement, nor shall NERC or the Regional Entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the CFR.

2. Each CFR or each individual entity within a CFR must identify a point of contact that is responsible for providing information and data, including submitting reports as needed by the Regional Entity related to the CFR Registration.
3. The Regional Entity shall notify NERC of each CFR that the Regional Entity accepts.
4. NERC or the Regional Entity may request clarification of any list submitted to it that identifies the compliance responsibilities of the CFR and may request such additional information as NERC or the Regional Entity deems appropriate.
5. The Regional Entity's acceptance of that CFR shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded the CFR will meet the Registration requirements of Section 501(1.4).
6. NERC shall maintain, and post on its website, a CFR registry listing all CFR Registrations that have been accepted by NERC or by a Regional Entity. The posting shall clearly list all the Reliability Standards or Requirements/sub-Requirements thereof for which each entity of the CFR is responsible for under the CFR.
7. The point of contact shall inform the Regional Entity of any changes to an existing CFR. The Regional Entity shall promptly notify NERC of each such revision.
8. In the event of a violation of a Reliability Standard or of a Requirement/sub-Requirement of a Reliability Standard for which an entity of a CFR is registered, that entity shall be identified in the Notice of Alleged Violation and shall be assessed the sanction or Penalty in accordance with the NERC Sanctions Guidelines. In the event a Regional Entity is not able to determine which entity(ies) is responsible for a particular Reliability Standard, or Requirements/sub-Requirements thereof that has been violated, the Regional Entity shall investigate the noncompliance in accordance with the NERC Rules of Procedure Section 400, *Compliance Enforcement*, to determine the entity(ies) to which the Regional Entity shall to issue the sanction or Penalty for the violation.

9. Nothing in Section 508 shall preclude an entity registered in a CFR, or any other entity from registering on its own behalf and undertaking full compliance responsibility including reporting Requirements for the Reliability Standards applicable to the function(s) for which the entity is registering. An entity registered in a CFR that registers as responsible for any Reliability Standard or Requirement/sub-Requirement of a Reliability Standard shall inform the point of contact of its Registration.

509. Exceptions to the Definition of the Bulk Electric System

An Element is considered to be (or not be) part of the Bulk Electric System by applying the BES Definition to the Element (including the inclusions and exclusions set forth therein). Appendix 5C sets forth the procedures by which (i) an entity may request a determination that an Element that falls within the definition of the Bulk Electric System should be exempted from being considered a part of the Bulk Electric System, or (ii) an entity may request that an Element that falls outside of the definition of the Bulk Electric System should be considered part of the Bulk Electric System.

SECTION 600 — PERSONNEL CERTIFICATION

601. Scope of Personnel Certification

Maintaining the reliability of the Bulk Electric System through implementation of the Reliability Standards requires skilled, trained and qualified system operators. The Personnel Certification Program provides the mechanism to ensure system operators are provided the education and training necessary to obtain the essential knowledge and skills and are therefore qualified to operate the Bulk Electric System. The Personnel Certification 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. NERC, as the ERO, will ensure skilled, trained, and qualified system operators through the Personnel Certification Program.

Except as necessary to obtain approval of the Rules of Procedure, 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.

602. Structure of ERO Personnel Certification Program

1. The NERC Personnel Certification Program shall be international in scope.
2. The PCGC shall (1) be able to independently exercise decision-making for all matters pertaining to Certification, (2) include individuals from the discipline being certified and whose composition addresses the needs of the users of the program (e.g., employers, regulators, etc.), and (3) have representation for each specialty or level within a discipline.
3. NERC shall maintain a nominating process for membership in the governing body. Nominations shall be open to all interested parties and self-nominations shall be accepted. The NERC Board of Trustees shall appoint members to the governing body from among those nominated. The members of the governing body shall serve at the pleasure of the Board.
4. The PCGC shall have control over the matters related to the Personnel Certification and re-Certification Programs listed below, without being subject to approval by any other body.
 - 4.1 Policies and procedures, including eligibility requirements and application processing.
 - 4.2 Requirements for personnel Certification, maintaining Certification, and re-Certification.
 - 4.3 Examination content, development, and administration.
 - 4.4 Examination cut score.

- 4.5 Grievance and disciplinary processes.
- 4.6 Governing body and subgroup(s)' meeting rules including agenda, frequency, and related procedures.
- 4.7 Subgroup(s) appointments and work assignments.
- 4.8 Publications about personnel Certification and re-Certification.
- 4.9 Setting fees for application, and all other services provided as a part of the personnel Certification and re-Certification activities.
- 4.10 Program funding, spending, and budget authority. Financial matters related to the operation of the program shall be segregated from other NERC activities.
5. The Personnel Certification Program shall utilize written procedures for the selection of members of the governing body that prohibit the governing body from selecting a majority of its successors.
6. The Personnel Certification Program shall be separate from the accreditation and education functions of NERC in related disciplines.
7. No member of the PCGC or staff member working with the Personnel Certification Program governing body shall have or exercise any authority or responsibility for compliance matters related to Reliability Standards concerning personnel Certification.

603. Examination and Maintenance of NERC System Operator Certification Credentials

1. System operators seeking to obtain a Credential must pass an examination to earn the Credential.
2. A certificate will be issued to successful candidates which is valid for three years.
3. A system operator must earn Continuing Education Hours (CE Hours) in NERC-Approved Learning Activities within the three-year period preceding the expiration date of his/her certificate as determined by the PCGC and posted in the NERC System Operator Program Manual. A system operator must request a renewal and submit the appropriate fee for Certification renewal evaluation.
4. The Credential of a certified system operator who does not accumulate the required number and balance of CE Hours within the three-year period will be Suspended. A system operator with a Suspended certificate cannot perform any task that requires an operator to be NERC-certified. The system operator with a Suspended Credential will have up to twelve months to acquire the necessary CE Hours.

- 4.1 During the time of suspension, the original anniversary date will be maintained. Therefore, should the system operator accumulate the required number of CE Hours within the twelve month suspension period, he/she will be issued a certificate that will be valid for three years from the previous expiration date.
- 4.2 At the end of the twelve-month suspension period, if the system operator has not accumulated the required number of CE Hours, the Credential will be Revoked and all CE Hours earned will be forfeited. After a Credential is Revoked, the system operator will be required to pass an examination to become certified.
5. **Hardship:** Due to unforeseen events and extenuating circumstances, a certified system operator may be unable to accumulate the necessary CE Hours in the time frame required by the Personnel Certification Program to maintain the Credential. In such an event, the individual must submit a written request containing a thorough explanation of the circumstances and supporting information to the NERC Personnel Certification Manager. The PCGC retains the right to invoke this hardship clause as it deems appropriate to address such events or circumstances.

604. Dispute Resolution Process

1. Any dispute arising under the NERC agreement establishing the *NERC Personnel Certification Program* or from the establishment of any NERC rules, policies, or procedures dealing with any segment of the Certification process shall be subject to the NERC System Operator Certification Dispute Resolution 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.
2. Dispute Resolution Process consists of three steps.
 - 2.1. **Notify NERC Personnel Certification Program Staff:** This first step can usually resolve the issues without further actions. It is expected that most disputes will be resolved at this step. If the issue(s) is not resolved to the satisfaction of the parties involved in the first step, the issue can be brought to the PCGC Dispute Resolution Task Force.
 - 2.2. **PCGC Dispute Resolution Task Force:** If the NERC staff did not resolve the issue(s) to the satisfaction of the parties involved, a written request must be submitted to the chairman of the PCGC through NERC staff explaining the issue(s) and requesting further action. Upon receipt of the letter, the PCGC chairman will present the request to the PCGC Dispute Resolution Task Force for action. This task force consists of three current members of the PCGC. The PCGC Dispute Resolution Task Force will

investigate and consider the issue(s) presented and make a decision. This decision will then be communicated to the submitting party, the PCGC chairman, and the NERC staff within 45 calendar days of receipt of the request.

3. Personnel Certification Governance Committee: If the PCGC Dispute Resolution Task Force's decision did not resolve the issue(s) to the satisfaction of the parties involved, the final step in the process is for the issue(s) to be brought before the PCGC. Within 45 days of the date of the Task Force's decision, the disputing party shall submit a written request to the PCGC chairman through NERC staff requesting that the issue(s) be brought before the PCGC for resolution. The chairman shall see that the necessary documents and related data are provided to the PCGC members as soon as practicable. The PCGC will then meet or conference to discuss the issue(s) and make their decision within 60 calendar days of the chairman's receipt of the request. The decision will be provided to the person bringing the issue(s) and the NERC staff. The PCGC is the governing body of the Certification program and its decision is final.
4. Dispute Resolution Process Expenses: All individual expenses associated with the Dispute Resolution Process, including salaries, meetings, or consultant fees, shall be the responsibility of the individual parties incurring the expense.
5. Decision Process: Robert's Rules of Order shall be used as a standard of conduct for the Dispute Resolution Process. A majority vote of the members present will decide all issues. The vote will be taken in a closed session. No member of the PCGC may participate in the Dispute Resolution Process, other than as a party or witness, if he or she has an interest in the particular matter.
 - 5.1 A stipulation of invoking the Dispute Resolution Process is that the entity invoking the Dispute Resolution Process agrees that neither NERC (its members, Board of Trustees, committees, subcommittees, and staff), any person assisting in the Dispute Resolution Process, nor any company employing a person assisting in the Dispute Resolution Process, shall be liable, and they shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the Dispute Resolution Process. This "hold harmless" clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.

605. Disciplinary Action

1. Disciplinary action may be necessary to protect the integrity of the system operator Credential. The PCGC may initiate disciplinary action should an individual act in a manner that is inconsistent with expectations, including but not limited to:

- 1.1. Willful, gross, and/or repeated violation of the NERC Reliability Standards as determined by a NERC investigation.
 - 1.2. Willful, gross, and/or repeated negligence in performing the duties of a certified system operator as determined by a NERC investigation.
 - 1.3. Intentional misrepresentation of information provided on a NERC application for a system operator Certification exam or to maintain a system operator Credential using CE Hours.
 - 1.4. Intentional misrepresentation of identification in the exam process, including a person identifying himself or herself as another person to obtain Certification for the other person.
 - 1.5. Any form of cheating during a Certification exam, including, but not limited to, bringing unauthorized reference material in the form of notes, crib sheets, or other methods of cheating into the testing center.
 - 1.6. A certified system operator's admission to or conviction of any felony or misdemeanor directly related to his/her duties as a system operator.
2. **Hearing Process:** Upon report to NERC of a candidate's or certified system operator's alleged misconduct, the NERC PCGC Credential Review Task Force will convene for the determination of facts. An individual, government agency, or other investigating authority can file a report. Unless the Task Force initially determines that the report of alleged misconduct is without merit, the candidate or certified system operator will be given the right to notice of the allegation. A hearing will be held and the charged candidate or certified system operator will be given an opportunity to be heard and present further relevant information. The Task Force may seek out information from other involved parties. The hearing will not be open to the public, but it will be open to the charged candidate or certified system operator and his or her representative. The Task Force will deliberate in a closed session, but the Task Force cannot receive any evidence during the closed session that was not developed during the course of the hearing.
 3. **Task Force's decision:** The Task Force's decision will be unanimous and will be in writing with inclusion of the facts and reasons for the decision. The Task Force's written decision will be delivered to the PCGC and by certified post to the charged candidate or certified system operator. In the event that the Task Force is unable to reach a unanimous decision, the matter shall be brought to the full committee for a decision.
 - 3.1. **No Action:** Allegation of misconduct was determined to be unsubstantiated or inconsequential to the Credential.
 - 3.2. **Probation:** A letter will be sent from NERC to the offender specifying:

- 3.2.1. The length of time of the probationary period (to be determined by the PCGC).
 - 3.2.2. Credential will remain valid during the probationary period.
 - 3.2.3. The probationary period does not affect the expiration date of the current certificate.
 - 3.2.4. During the probationary period, a subsequent offense of misconduct, as determined through the same process as described above, may be cause for more serious consequences.
 - 3.3. Revoke for Cause: A letter will be sent from NERC to the offender specifying:
 - 3.3.1. The length of time of the probationary period (to be determined by the PCGC).
 - 3.3.2. Credential is no longer valid.
 - 3.3.3. Successfully passing an exam will be required to become recertified.
 - 3.3.4. An exam will not be authorized until the revocation period expires
 - 3.4. Termination of Credential: A letter will be sent from NERC to the offender specifying permanent removal of Credential.
4. Credential Review Task Force: The Credential Review Task Force shall be comprised of three active members of the PCGC assigned by the Chairman of the PCGC on an ad hoc basis. No one on the Credential Review Task Force may have an interest in the particular matter. The Task Force will meet in a venue determined by the Task Force chairman.
5. Appeal Process: The decision of the Task Force may be appealed using the NERC System Operator Certification Dispute Resolution Process.

606. Candidate Testing Mechanisms

1. The Personnel Certification Program shall utilize reliable testing mechanisms to evaluate individual competence in a manner that is objective, fair to all candidates, job-related, and based on the knowledge and skill needed to function in the discipline.

2. The Personnel Certification Program shall implement a formal policy of periodic review of the testing mechanisms to ensure ongoing relevance of the mechanisms to knowledge and skill needed in the discipline.
3. The Personnel Certification Program shall utilize policies and procedures to ensure that all test administration and development materials are secure and demonstrate that these policies and procedures are consistently implemented.
4. The Personnel Certification Program shall establish pass/fail levels that protect the public with a method that is based on competence and generally accepted in the psychometric community as being fair and reasonable.
5. The Personnel Certification Program shall conduct ongoing studies to substantiate the reliability and validity of the testing mechanisms.
6. The Personnel Certification Program shall utilize policies and procedures that govern how long examination records are kept in their original format.
7. The Personnel Certification Program shall demonstrate that different forms of the testing mechanisms assess equivalent content and that candidates are not penalized for taking forms of varying difficulty.

607. Public Information About the Personnel Certification Program

1. The Personnel Certification Program shall maintain and publish publicly a System Operator Certification Program Manual describing the procedures used in examination construction and validation; all eligibility requirements and determination; fees; and examination administration documents, including: reporting of results, re-Certification requirements, and disciplinary and dispute resolution.
2. The Personnel Certification Program shall maintain and publish publicly a comprehensive summary or outline of the information, knowledge, or functions covered by each examination.
3. The Personnel Certification Program shall publish publicly and make available at least annually a summary of Certification activities for the program, including at least the following information: number of examinations delivered, the number passed, the number failed, and the number certified.

608. Responsibilities to Applicants for Certification or Re-Certification

The Personnel Certification Program:

1. Shall not discriminate among applicants as to age, gender, race, religion, national origin, disability, or marital status and shall include a statement of non-discrimination in announcements of the program.

2. Shall comply with all requirements of applicable federal and state/provincial laws with respect to all Certification and re-Certification activities, and shall require compliance of all contractors and/or providers of services.
3. Shall make available to all applicants copies of formalized procedures for application for, and attainment of, personnel Certification and re-Certification and shall uniformly follow and enforce such procedures for all applicants.
4. Shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.
5. Shall provide competently proctored examination sites.
6. Shall uniformly report examination results to applicants in a timely manner.
7. Shall give applicants failing the examination information on general content areas of deficiency.

609. Responsibilities to the Public and to Employers of Certified Practitioners

The Personnel Certification Program:

1. Shall demonstrate that the testing mechanisms adequately measure the knowledge and skill required for entry, maintenance, and/or advancement in the profession for each position to be certified.
2. Shall award Certification and re-Certification only after the skill and knowledge of the individual have been evaluated and determined to be acceptable.
3. Shall maintain, in an electronic format, a current list of those persons certified in the programs and have policies and procedures that delineate what information about a Credential holder may be made public and under what circumstances.
4. Shall have formal policies and procedures for discipline of a Credential holder, including the revocation of the certificate, for conduct deemed harmful to the public or inappropriate to the discipline (e.g., incompetence, unethical behavior, physical or mental impairment affecting performance). These procedures shall incorporate due process.
5. Shall demonstrate that any title or Credential awarded accurately reflects or applies to the practitioner's daily occupational or professional duties and is not confusing to employers, consumers, regulators, related professions, and/or other interested parties.

SECTION 700 — RELIABILITY READINESS EVALUATION AND IMPROVEMENT AND FORMATION OF SECTOR FORUMS

701. Confidentiality Requirements for Readiness Evaluations and Evaluation Team Members

1. All information made available or created during the course of any reliability readiness evaluation including, but not limited to, data, Documents, observations and notes, shall be maintained as confidential by all evaluation team members, in accordance with the requirements of Section 1500.
2. Evaluation team members are obligated to destroy all confidential evaluation notes following the posting of the final report of the reliability readiness evaluation.
3. NERC will retain reliability readiness evaluation-related documentation, notes, and materials for a period of time as defined by NERC.
4. These confidentiality requirements shall survive the termination of the NERC Reliability Readiness Evaluation and Improvement Program.

702. Formation of Sector Forum

1. NERC will form a sector forum at the request of any five members of NERC that share a common interest in the safety and reliability of the Bulk Power System. The members of sector forum may invite such others of the members of NERC to join the sector forum as the sector forum deems appropriate.
2. The request to form a sector forum must include a proposed charter for the sector forum. The Board must approve the charter.
3. NERC will provide notification of the formation of a sector forum to its membership roster. Notices and agendas of meetings shall be posted on NERC's website.
4. A sector forum may make recommendations to any of the NERC committees and may submit a Standards Authorization Request to the NERC *Reliability Standards Development Procedure*.

SECTION 800 — RELIABILITY ASSESSMENT AND PERFORMANCE ANALYSIS

801. Objectives of the Reliability Assessment and Performance Analysis Program

The objectives of the NERC Reliability Assessment and Performance Analysis Program are to: (1) conduct, and report the results of, an independent assessment of the overall reliability and adequacy of the interconnected North American Bulk Power Systems, both as existing and as planned; (2) analyze off-normal events on the Bulk Power System; (3) identify the root causes of events that may be precursors of potentially more serious events; (4) assess past reliability performance for lessons learned; (5) disseminate findings and lessons learned to the electric industry to improve reliability performance; and (6) develop reliability performance benchmarks. The final reliability assessment reports shall be approved by the Board for publication to the electric industry and the general public.

802. Scope of the Reliability Assessment Program

1. The scope of the Reliability Assessment Program shall include:
 - 1.1 Review, assess, and report on the overall electric generation and transmission reliability (adequacy and operating reliability) of the interconnected Bulk Power Systems, both existing and as planned.
 - 1.2 Assess and report on the key issues, risks, and uncertainties that affect or have the potential to affect the reliability of existing and future electric supply and transmission.
 - 1.3 Review, analyze, and report on Regional Entity self-assessments of electric supply and bulk power transmission reliability, including reliability issues of specific regional concern.
 - 1.4 Identify, analyze, and project trends in electric customer demand, supply, and transmission and their impacts on Bulk Power System reliability.
 - 1.5 Investigate, assess, and report on the potential impacts of new and evolving electricity market practices, new or proposed regulatory procedures, and new or proposed legislation (e.g. environmental requirements) on the adequacy and operating reliability of the Bulk Power Systems.
2. The Reliability Assessment Program shall be performed in a manner consistent with the Reliability Standards of NERC including but not limited to those that specify reliability assessment Requirements.

803. Reliability Assessment Reports

The number and type of periodic assessments that are to be conducted shall be at the discretion of NERC. The results of the reliability assessments shall be documented in three reports: the long-term and the annual seasonal (summer) and the annual seasonal (winter) assessment reports. NERC shall also conduct special reliability assessments from time to time as circumstances warrant. The reliability assessment reports shall be reviewed and approved for publication by the Board. The three regular reports are described below.

1. **Long-Term Reliability Assessment Report** — The annual long-term report shall cover a ten-year planning horizon. The planning horizon of the long-term reliability assessment report shall be subject to change at the discretion of NERC. Detailed generation and transmission adequacy assessments shall be conducted for the first five years of the review period. For the second five years of the review period, the assessment shall focus on the identification, analysis, and projection of trends in peak demand, electric supply, and transmission adequacy, as well as other industry trends and developments that may impact future electric system reliability. Reliability issues of concern and their potential impacts shall be presented along with any mitigation plans or alternatives. The long-term reliability assessment reports will generally be published in the fall (September) of each year. NERC will also publish electricity supply and demand data associated with the long-term reliability assessment report.
2. **Summer Assessment Report** — The annual summer seasonal assessment report typically shall cover the four-month (June–September) summer period. It shall provide an overall perspective on the adequacy of the generation resources and the transmission systems necessary to meet projected summer peak demands. It shall also identify reliability issues of interest and regional and subregional areas of concern in meeting projected customer demands and may include possible mitigation alternatives. The report will generally be published in mid-May for the upcoming summer period.
3. **Winter Assessment Report** — The annual winter seasonal assessment report shall cover the three-month (December–February) winter period. The report shall provide an overall perspective on the adequacy of the generation resources and the transmission systems necessary to meet projected winter peak demands. Similar to the summer assessment, the winter assessment shall identify reliability issues of interest and regional and subregional areas of concern in meeting projected customer demands and may also include possible mitigation alternatives. The winter assessment report will generally be published in mid-November for the upcoming winter period.
4. **Special Reliability Assessment Reports** — In addition to the long-term and seasonal reliability assessment reports, NERC shall also conduct special reliability assessments on a regional, interregional, and Interconnection basis as conditions warrant, or as requested by the Board or governmental authorities. The teams of reliability and technical experts also may initiate special assessments of key

reliability issues and their impacts on the reliability of a regions, subregions, or Interconnection (or a portion thereof). Such special reliability assessments may include, among other things, operational reliability assessments, evaluations of emergency response preparedness, adequacy of fuel supply, hydro conditions, reliability impacts of new or proposed environmental rules and regulations, and reliability impacts of new or proposed legislation that affects or has the potential to affect the reliability of the interconnected Bulk Power Systems in North America.

804. Reliability Assessment Data and Information Requirements

To carry out the reviews and assessments of the overall reliability of the interconnected Bulk Power Systems, the Regional Entities and other entities shall provide sufficient data and other information requested by NERC in support of the annual long-term and seasonal assessments and any special reliability assessments.

Some of the data provided for these reviews and assessment may be considered confidential from a competitive marketing perspective, a Critical Energy Infrastructure Information perspective, or for other purposes. Such data shall be treated in accordance with the provisions of Section 1500 – Confidential Information.

While the major sources of data and information for this program are the Regional Entities, a team of reliability and technical experts is responsible for developing and formulating its own independent conclusions about the near-term and long-term reliability of the Bulk Power Systems.

In connection with the reliability assessment reports, requests shall be submitted to each of the Regional Entities for required reliability assessment data and other information, and for each Regional Entity's self-assessment report. The timing of the requests will be governed by the schedule for the preparation of the assessment reports.

The Regional Entity self-assessments are to be conducted in compliance with NERC Reliability Standards and the respective regional planning criteria. The team(s) of reliability and technical experts shall also conduct interviews with the Regional Entities as needed. The summary of the Regional Entity self-assessments that are to be included in the assessment reports shall follow the general outline identified in NERC's request. This outline may change from time to time as key reliability issues change.

In general, the Regional Entity reliability self-assessments shall address, among other areas, the following topics: demand and Net Energy for Load; assessment of projected resource adequacy; any transmission constraints that may impact bulk transmission adequacy and plans to alleviate those constraints; any unusual operating conditions that could impact reliability for the assessment period; fuel supply adequacy; the deliverability of generation (both internal and external) to Load; and any other reliability issues in the Region and their potential impacts on the reliability of the Bulk Power Systems.

805. Reliability Assessment Process

Based on their expertise, the review of the collected data, the review of the Regional Entity self-assessment reports, and interviews with the Regional Entities, as appropriate, the teams of reliability and technical experts shall perform an independent review and assessment of the generation and transmission adequacy of each Region's existing and planned Bulk Power System. The results of the review teams shall form the basis of NERC's long-term and seasonal reliability assessment reports. The review and assessment process is briefly summarized below.

1. **Resource Adequacy Assessment** — The teams shall evaluate the regional demand and resource capacity data for completeness in the context of the overall resource capacity needs of the Region. The team shall independently evaluate the ability of the Regional Entity members to serve their obligations given the demand growth projections, the amount of existing and planned capacity, including committed and uncommitted capacity, contracted capacity, or capacity outside of the Region. If the Region relies on capacity from outside of the Region to meet its resource objectives, the ability to deliver that capacity shall be factored into the assessment. The demand and resource capacity information shall be compared to the resource adequacy requirements of the Regional Entity for the year(s) or season(s) being assessed. The assessment shall determine if the resource information submitted represents a reasonable and attainable plan for the Regional Entity and its members. For cases of inadequate capacity or reserve margin, the Regional Entity will be requested to analyze and explain any resource capacity inadequacies and its plans to mitigate the reliability impact of the potential inadequacies. The analysis may be expanded to include surrounding areas. If the expanded analysis indicates further inadequacies, then an interregional problem may exist and will be explored with the applicable Regions. The results of these analyses shall be described in the assessment report.
2. **Transmission Adequacy and Operating Reliability Assessment** — The teams shall evaluate transmission system information that relates to the adequacy and operating reliability of the regional transmission system. That information shall include: regional planning study reports, interregional planning study reports, and/or regional operational study reports. If additional information is required, another data request shall be sent to the Regional Entity. The assessment shall provide a judgment on the ability of the regional transmission system to operate reliably under the expected range of operating conditions over the assessment period as required by NERC Reliability Standards. If sub-areas of the regional system are especially critical to the Reliable Operation of the regional bulk transmission system, these Facilities or sub-areas shall be reviewed and addressed in the assessment. Any areas of concern related to the adequacy or operating reliability of the system shall be identified and reported in the assessment.
3. **Seasonal Operating Reliability Assessment** — The team(s) shall evaluate the overall operating reliability of the regional bulk transmission systems. In areas with potential resource adequacy or system operating reliability problems, operational readiness of the affected Regional Entities for the upcoming season

shall be reviewed and analyzed. The assessment may consider unusual but possible operating scenarios and how the system is expected to perform. Operating reliability shall take into account a wide range of activities, all of which should reinforce the Regional Entity's ability to deal with the situations that might occur during the upcoming season. Typical activities in the assessment may include: facility modifications and additions, new or modified operating procedures, emergency procedures enhancement, and planning and operating studies. The teams shall report the overall seasonal operating reliability of the regional transmission systems in the annual summer and winter assessment reports.

4. **Reporting of Reliability Assessment Results** — The teams of reliability and technical experts shall provide an independent assessment of the reliability of the Regional Entities and the North American interconnected Bulk Power System for the period of the assessment. While the Regional Entities are relied upon to provide the information to perform such assessments, the review team is not required to accept the conclusions provided by the Regional Entities. Instead, the review team is expected, based on their expertise, to reach their own independent conclusions about the status of the adequacy of the generation and bulk power transmission systems of North America.

The review team also shall strive to achieve consensus in their assessments. The assessments that are made are based on the best information available at the time. However, since judgment is applied to this information, legitimate differences of opinion can develop. Despite these differences, the review team shall work to achieve consensus on their findings.

In addition to providing long-term and seasonal assessments in connection with the Reliability Assessment Program, the review team of experts shall also be responsible for recommending new and revised Reliability Standards related to the reliability assessments and the reliability of the Bulk Power Systems. These proposals for new or revised Reliability Standards shall be entered into NERC's Reliability Standards development process.

Upon completion of the assessment, the team shall share the results with the Regional Entities. The Regional Entities shall be given the opportunity to review and comment on the conclusions in the assessment and to provide additional information as appropriate. The reliability assessments and their conclusions are the responsibility of NERC's technical review team and NERC.

The preparation and approval of NERC's reliability assessment reports shall follow a prescribed schedule including review, comment, and possible approval by appropriate NERC committees. The long-term and seasonal (summer and winter) reliability assessment reports shall be further reviewed for approval by the Board for publication to the electric industry.

806. Scope of the Reliability Performance and Analysis Program

The components of the program will include analysis of large-scale outages, disturbances, and near misses to determine root causes and lessons learned; identification and continuous monitoring of performance indices to detect emerging trends and signs of a decline in reliability performance; and communications of performance results, trends, recommendations, and initiatives to those responsible to take actions; followed with confirmation of actions to correct any deficiencies identified. Within NERC, the reliability performance program will provide performance results to the Reliability Standards Development and Compliance Monitoring and Enforcement Programs to make the necessary adjustments to preserve reliability based on a risk-based approach.

807. Analysis of Major Events

Responding to 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, can be divided into four phases: situational assessment and communications; situation tracking and communications; data collection, investigation, analysis, and reporting; and follow-up on recommendations.

1. NERC's role following a major event is to provide leadership, coordination, technical expertise, and assistance to the industry in responding to the major event. Working closely with the Regional Entities and Reliability Coordinators, and other appropriate Registered Entities, NERC will coordinate and facilitate efforts among industry participants, and with state, federal, and provincial governments in the United States and Canada to support the industry's response.
2. When responding to any major event where physical or cyber security is suspected as a cause or contributing factor to the major event, NERC will immediately notify appropriate government agencies and coordinate its activities with them.
3. To the extent that a Reliability Standard sets forth specific criteria and procedures for reporting the Bulk Power System disturbances and events described in that Reliability Standard, all Registered Entities that are subject to the Requirements of that Reliability Standard must report the information required by that Reliability Standard within the time periods specified. In addition to reporting information as required by applicable Reliability Standards, each user, owner, and operator of the Bulk Power System shall also provide NERC and the applicable Regional Entities with such additional information requested by NERC or the applicable Regional Entity as is necessary to enable NERC and the applicable Regional Entities to carry out their responsibilities under this section.
4. During the conduct of NERC analyses, assistance may be needed from government agencies. This assistance could include: authority to require data reporting from affected or involved parties; communications with other agencies of government; investigations related to possible criminal or terrorist involvement in the major event; resources for initial data gathering immediately after the major

event; authority to call meetings of affected or involved parties; and technical and analytical resources for studies.

5. NERC shall work with all other participants to establish a clear delineation of roles, responsibilities, and coordination requirements among industry and government for the investigation and reporting of findings, conclusions, and recommendations related to major events with the objective of avoiding, to the extent possible, multiple investigations of the same major event. If the major event is confined to a single Regional Entity, NERC representatives will participate as members of the Regional Entity analysis team. NERC will establish, maintain, and revise from time to time as appropriate based on experience, a manual setting forth procedures and protocols for communications and sharing and exchange of information between and among NERC, the affected Regional Entity or Entities, and relevant governmental authorities, industry organizations and Bulk Power System user, owners, and operators concerning the investigation and analysis of major events.
6. NERC and applicable entity(s) will apply, as appropriate to the circumstances of the major event, the NERC *Blackout and Disturbance Response Procedures*, which are incorporated into these Rules of Procedure as **Appendix 8**. These procedures provide a framework to guide NERC's response to major events that may have multiregional, national, or international implications. Experienced industry leadership shall be applied to tailor the response to the specific circumstances of the major event. In accordance with those procedures, the NERC president will determine whether the major event warrants analysis at the NERC level. A Regional Entity may request that NERC elevate any analysis of a major event to the NERC level.
7. NERC will screen and analyze the findings and recommendations from the analysis, and those with generic applicability will be disseminated to the industry through various means appropriate to the circumstances, including in accordance with Section 810.

808. Analysis of Off-Normal Occurrences, Bulk Power System Performance, and Bulk Power System Vulnerabilities

1. NERC and Regional Entities will analyze Bulk Power System and equipment performance occurrences that do not rise to the level of a major event, as described in Section 807. NERC and Regional Entities will also analyze potential vulnerabilities in the Bulk Power System that they discover or that are brought to their attention by other sources including government agencies. The purpose of these analyses is to identify the root causes of occurrences or conditions that may be precursors of major events or other potentially more serious occurrences, or that have the potential to cause major events or other more serious occurrences, to assess past reliability performance for lessons learned, and to develop reliability performance benchmarks and trends.

2. NERC and Regional Entities will screen and analyze off-normal occurrences, Bulk Power System performance, and potential Bulk Power System vulnerabilities for significance, and information from those indicated as having generic applicability will be disseminated to the industry through various means appropriate to the circumstances, including in accordance with Section 810.
3. To the extent that a Reliability Standard sets forth specific criteria and procedures for reporting the Bulk Power System disturbances and events described in that Reliability Standard, all Registered Entities that are subject to the Requirements of that Reliability Standard must report the information required by that Reliability Standard within the time periods specified. In addition to reporting information as required by applicable Reliability Standards, each user, owner, and operator, of the Bulk Power System shall provide NERC and the applicable Regional Entities with such additional information requested by NERC or the applicable Regional Entities as is necessary to enable NERC and the applicable Regional Entities to carry out their responsibilities under this section.

809. Reliability Benchmarking

NERC shall identify and track key reliability indicators as a means of benchmarking reliability performance and measuring reliability improvements. This program will include assessing available metrics, developing guidelines for acceptable metrics, maintaining a performance metrics “dashboard” on the NERC website, and developing appropriate reliability performance benchmarks.

810. Information Exchange and Issuance of NERC Advisories, Recommendations and Essential Actions

1. Members of NERC and Bulk Power System owners, operators, and users shall provide NERC with detailed and timely operating experience information and data.
2. In the normal course of operations, NERC disseminates the results of its events analysis findings, lessons learned and other analysis and information gathering to the industry. These findings, lessons learned and other information will be used to guide the Reliability Assessment Program.
3. When NERC determines it is necessary to place the industry or segments of the industry on formal notice of its findings, analyses, and recommendations, NERC will provide such notification in the form of specific operations or equipment Advisories, Recommendations or Essential Actions:
 - 3.1 Level 1 (Advisories) – purely informational, intended to advise certain segments of the owners, operators and users of the Bulk Power System of findings and lessons learned;
 - 3.2 Level 2 (Recommendations) – specific actions that NERC is recommending be considered on a particular topic by certain segments of

owners, operators, and users of the Bulk Power System according to each entity's facts and circumstances;

- 3.3 Level 3 (Essential Actions) – specific actions that NERC has determined are essential for certain segments of owners, operators, or users of the Bulk Power System to take to ensure the reliability of the Bulk Power System. Such Essential Actions require NERC Board approval before issuance.
4. The Bulk Power System owners, operators, and users to which Level 2 (Recommendations) and Level 3 (Essential Actions) notifications apply are to evaluate and take appropriate action on such issuances by NERC. Such Bulk Power System owners, operators, and users shall also provide reports of actions taken and timely updates on progress towards resolving the issues raised in the Recommendations and Essential Actions in accordance with the reporting date(s) specified by NERC.
5. NERC will advise the Commission and other Applicable Governmental Authorities of its intent to issue all Level 1 (Advisories), Level 2 (Recommendations), and Level 3 (Essential Actions) at least five (5) business days prior to issuance, unless extraordinary circumstances exist that warrant issuance less than five (5) business days after such advice. NERC will file a report with the Commission and other Applicable Governmental Authorities no later than thirty (30) days following the date by which NERC has requested the Bulk Power System owners, operators, and users to which a Level 2 (Recommendation) or Level 3 (Essential Action) issuance applies to provide reports of actions taken in response to the notification. NERC's report to the Commission and other Applicable Governmental Authorities will describe the actions taken by the relevant owners, operators, and users of the Bulk Power System and the success of such actions taken in correcting any vulnerability or deficiency that was the subject of the notification, with appropriate protection for Confidential Information or Critical Energy Infrastructure Information.

811. Equipment Performance Data

Through its Generating Availability Data System (GADS), NERC shall collect operating information about the performance of electric generating equipment; provide assistance to those researching information on power plant outages stored in its database; and support equipment reliability as well as availability analyses and other decision-making processes developed by GADS subscribers. GADS data is also used in conducting assessments of generation resource adequacy.

SECTION 900 — TRAINING AND EDUCATION

901. Scope of the Training and Education Program

Maintaining the reliability of the Bulk Electric System through implementation of the Reliability Standards requires informed and trained personnel. The training and education program will provide the education and training necessary for Bulk Power System personnel and regulators to obtain the essential knowledge necessary to understand and operate the Bulk Electric System.

NERC shall develop and maintain training and education programs for the purpose of establishing training requirements, developing materials, and developing training activities. The target audience of the training and education programs shall be Bulk Power System operating personnel including system operations personnel, operations support personnel (engineering and information technology), supervisors and managers, training personnel, and other personnel directly responsible for complying with NERC Reliability Standards who, through their actions or inactions, may impact the real-time, or day-ahead reliability of the Bulk Power System.

NERC shall also develop and provide appropriate training and education for industry participants and regulators affected by new or changed Reliability Standards or compliance Requirements.

To accomplish those objectives:

1. NERC shall periodically conduct job task analyses for targeted Bulk Power System personnel to ensure that the training program content is properly aligned to the job tasks performed by those personnel.
2. NERC shall develop and maintain personnel training program curriculum requirements based on valid job-task analysis.
3. NERC shall periodically conduct performance surveys to determine the effectiveness of the training program and identify areas for further training development and improvement.
4. NERC shall develop training and education materials and activities to assist Bulk Power System entities implementing new or revised Reliability Standard Requirements or other NERC-related changes.
5. NERC shall develop and provide training to people who participate in NERC and Regional Entity evaluations, audits, and investigations for the Compliance Monitoring and Enforcement Program, Organization Certification Program, and the continuing education program.

902. Continuing Education Program

NERC shall develop and maintain a continuing education program to foster the improvement of training and to promote quality in the training programs used by and

implemented by Bulk Power System entities. The program shall approve or accredit those activities and entities meeting NERC continuing education requirements.

1. NERC shall develop and implement continuing education program requirements that promote excellence in training programs and advance improved performance for Bulk Power System personnel identified in Section 901.
2. NERC shall develop and maintain a process to approve or accredit continuing education Providers and activities seeking approval or accreditation and meeting NERC-approved continuing education requirements.
3. NERC shall perform periodic audits on continuing education Providers and training activities to ensure that the approved or accredited Providers and training activities satisfy NERC continuing education requirements.
4. NERC shall develop and maintain an appeals process for disputed application reviews, interpretations of guidelines and standards, probation or suspension of NERC-approved Provider status, or Continuing Education Hour disputes.

SECTION 1000 — SITUATION AWARENESS AND INFRASTRUCTURE SECURITY

1001. Situation Awareness

NERC shall through the use of Reliability Coordinators and available tools, monitor present conditions on the Bulk Power System and provide leadership coordination, technical expertise, and assistance to the industry in responding to events as necessary. To accomplish these goals, NERC will:

1. Maintain real-time situation awareness of conditions on the Bulk Power System;
2. Notify the industry of significant Bulk Power System events that have occurred in one area, and which have the potential to impact reliability in other areas;
3. Maintain and strengthen high-level communication, coordination, and cooperation with governments and government agencies regarding real-time conditions; and
4. Enable the Reliable Operation of interconnected Bulk Power Systems by facilitating information exchange and coordination among reliability service organizations.

1002. Reliability Support Services

NERC 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. NERC will work with the 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. To accomplish this goal, NERC will:

1. Collaborate with industry to determine the necessity of new tools or services to enhance reliability;
2. For those tools that the collaborative process determines should proceed to a development phase, provide a start-up mechanism and development system;
3. Implement the tool either on its own or through an appropriate group or organization; and
4. Where NERC conducts the implementation phase of a new tool or service, develop a transition plan to turn maintenance and provision of the tool or service over to an organization identified in the development stage.

In addition to tools developed as a result of a collaborative process with industry, NERC may develop reliability tools on its own, but will consult with industry concerning the need for the tool prior to proceeding 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.

1003. Infrastructure Security Program

NERC shall coordinate electric industry activities to promote Critical Infrastructure protection of the Bulk Power System in North America by taking a leadership role in Critical Infrastructure protection of the electricity sector so as to reduce vulnerability and improve mitigation and protection of the electricity sector's Critical Infrastructure. To accomplish these goals, NERC shall perform the following functions.

1. Electric Sector Information Sharing and Analysis Center (ESISAC)
 - 1.1 NERC shall serve as the electricity sector's sector coordinator and operate its Information Sharing and Analysis Center to gather information and communicate security-related threats and incidents within the sector, with United States and Canadian government agencies, and with other Critical Infrastructure sectors.
 - 1.2 NERC shall improve the capability of the ESISAC to analyze security threats and incident information and provide situational assessments for the electricity sector and governments.
 - 1.3 NERC shall work closely with the United States Department of Homeland Security, Department of Energy, Natural Resources Canada, and Public Safety and Emergency Preparedness Canada.
 - 1.4 NERC shall strengthen and expand these functions and working relationships with the electricity sector, other Critical Infrastructure industries, governments, and government agencies throughout North America to ensure the protection of the infrastructure of the Bulk Power System.
 - 1.5 NERC shall fill the role of the Electricity Sector Coordinating Council and coordinate with the Government Coordinating Council.
 - 1.6 NERC shall coordinate with other Critical Infrastructure sectors through active participation with the other Sector Coordinating Councils, the other ISACs, and the National Infrastructure Advisory Committee.
 - 1.7 NERC shall encourage and participate in coordinated Critical Infrastructure protection exercises, including interdependencies with other Critical Infrastructure sectors.
2. Security Planning

- 2.1 NERC shall take a risk management approach to Critical Infrastructure protection, considering probability and severity, and recognizing that mitigation and recovery can be practical alternatives to prevention.
- 2.2 NERC shall keep abreast of the changing threat environment through collaboration with government agencies.
- 2.3 NERC shall develop criteria to identify critical physical assets and Critical Cyber Assets, assess security threats, identify risk assessment methodologies, and assess effectiveness of physical and cyber protection measures.
- 2.4 NERC shall enhance and maintain the Bulk Power System critical spare transformer program, encourage increased participation by asset owners, and continue to assess the need to expand this program to include other critical Bulk Power System equipment.
- 2.5 NERC shall support implementation of the Critical Infrastructure Protection Standards through education and outreach.
- 2.6 NERC shall review and improve existing security guidelines, develop new security guidelines to meet the needs of the electricity sector, and consider whether any guidelines should be developed into Reliability Standards.
- 2.7 NERC shall conduct education and outreach initiatives to increase awareness and respond to the needs of the electricity sector.
- 2.8 NERC shall strengthen relationships with federal, state, and provincial government agencies on Critical Infrastructure protection matters.
- 2.9 NERC shall maintain and improve mechanisms for the sharing of sensitive or classified information with federal, state, and provincial government agencies on Critical Infrastructure protection matters; work with DOE and DHS to implement the National Infrastructure Protection Plan, as applicable to the electricity sector; and coordinate this work with PSEPC.
- 2.10 NERC shall improve methods to better assess the impact of a possible physical attack on the Bulk Power System and means to deter, mitigate, and respond following an attack.
- 2.11 NERC shall assess the results of vulnerability assessments and enhance the security of system control and data acquisition (SCADA) and process control systems by developing methods to detect an emerging cyber attack and the means to mitigate impacts on the Bulk Power Systems.
- 2.12 NERC shall work with the National SCADA Test Bed and the Process Control Systems Forum to accelerate the development of technology that

will enhance the security, safety, and reliability of process control and SCADA systems.

SECTION 1100 — ANNUAL NERC BUSINESS PLANS AND BUDGETS

1101. Scope of Business Plans and Budgets

The Board shall determine the content of the budgets to be submitted to the Applicable Governmental Authorities with consultation from the members of the Member Representatives Committee, Regional Entities, and others in accordance with the Bylaws. The Board shall identify any activities outside the scope of NERC's statutory reliability functions, if any, and the appropriate funding mechanisms for those activities.

1102. NERC Funding and Cost Allocation

1. In order that NERC's costs shall be fairly allocated among Interconnections and among Regional Entities, the NERC funding mechanism for all statutory functions shall be based on Net Energy for Load (NEL).
2. NERC's costs shall be allocated so that all Load (or, in the case of costs for an Interconnection or Regional Entity, all Load within that Interconnection or Regional Entity) bears an equitable share of such costs based on NEL.
3. Costs shall be equitably allocated between countries or Regional Entities thereof for which NERC has been designated or recognized as the Electric Reliability Organization.
4. Costs incurred to accomplish the statutory functions for one Interconnection, Regional Entity, or group of entities will be directly assigned to that Interconnection, Regional Entity, or group of entities provided that such costs are allocated equitably to end-users based on Net Energy for Load.

1103. NERC Budget Development

1. The NERC annual budget process shall be scheduled and conducted for each calendar year so as to allow a sufficient amount of time for NERC to receive Member inputs, develop the budget, and receive Board and, where authorized by applicable legislation or agreement, Applicable Governmental Authority approval of the NERC budget for the following fiscal year, including timely submission of the proposed budget to FERC for approval in accordance with FERC regulations.
2. The NERC budget submittal to Applicable Governmental Authorities shall include provisions for all ERO functions, all Regional Entity delegated functions as specified in delegation agreements and reasonable reserves and contingencies.
3. The NERC annual budget submittal to Applicable Governmental Authorities shall include description and explanation of NERC's proposed ERO program activities for the year; budget component justification based on statutory or other authorities; explanation of how each budgeted activity lends itself to the accomplishment of the statutory or other authorities; sufficiency of resources

provided for in the budget to carry out the ERO program responsibilities; explanation of the calculations and budget estimates; identification and explanation of changes in budget components from the previous year's budget; information on staffing and organization charts; and such other information as is required by FERC and other Applicable Governmental Authorities having authority to approve the proposed budget.

4. NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, to allow a meaningful comparison of actual results at the NERC and Regional Entity level by the Applicable Governmental Authorities.

1104. Submittal of Regional Entity Budgets to NERC

1. Each Regional Entity shall submit its proposed annual budget for carrying out its delegated authority functions as well as all other activities and funding to NERC in accordance with a schedule developed by NERC and the Regional Entities, which shall provide for the Regional Entity to submit its final budget that has been approved by its board of directors or other governing body no later than July 1 of the prior year, in order to provide sufficient time for NERC's review and comment on the proposed budget and approval of the Regional Entity budget by the NERC Board of Trustees in time for the NERC and Regional Entity budgets to be submitted to FERC and other Applicable Governmental Authorities for approval in accordance with their regulations. The Regional Entity's budget shall include supporting materials in accordance with the budget and reporting format developed by NERC and the Regional Entities, including the Regional Entity's complete business plan and organization chart, explaining the proposed collection of all dues, fees, and charges and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures.
2. NERC shall review and approve each Regional Entity's budget for meeting the requirements of its delegated authority. Concurrent with approving the NERC budget, NERC shall review and approve, or reject, each Regional Entity budget for filing.
3. NERC shall also have the right to review from time to time, in reasonable intervals but no less frequently than every three years, the financial books and records of each Regional Entity having delegated authority in order to ensure that the documentation fairly represents in all material aspects appropriate funding of delegated functions.

1105. Submittal of NERC and Regional Entity Budgets to Governmental Authorities for Approval

1. NERC shall file for approval by the Applicable Governmental Authorities at least 130 days in advance of the start of each fiscal year. The filing shall include: (1) the complete NERC and Regional Entity budgets including the business plans and organizational charts approved by the Board, (2) NERC's annual funding requirement (including Regional Entity costs for delegated functions), and (3) the

mechanism for assessing charges to recover that annual funding requirement, together with supporting materials in sufficient detail to support the requested funding requirement.

2. NERC shall seek approval from each Applicable Governmental Authority requiring such approval for the funding requirements necessary to perform ERO activities within their jurisdictions.

1106. NERC and Regional Entity Billing and Collections

1. NERC shall request the Regional Entities to identify all Load-Serving Entities³ within each Regional Entity and the NEL assigned to each Load-Serving Entity, and the Regional Entities shall supply the requested information. The assignment of a funding requirement to an entity shall not be the basis for determining that the entity must be registered in the Compliance Registry.
2. NERC shall accumulate the NEL by Load-Serving Entities for each Applicable Governmental Authority and submit the proportional share of NERC funding requirements to each Applicable Governmental Authority for approval together with supporting materials in sufficient detail to support the requested funding requirement.
3. NEL reported by Balancing Authorities within a Region shall be used to rationalize and validate amounts allocated for collection through Regional Entity processes.
4. The billing and collection processes shall provide:
 - 4.1 A clear validation of billing and application of payments.
 - 4.2 A minimum of data requests to those being billed.
 - 4.3 Adequate controls to ensure integrity in the billing determinants including identification of entities responsible for funding NERC's activities.
 - 4.4 Consistent billing and collection terms.
5. NERC will bill and collect all budget requirements approved by Applicable Governmental Authorities (including the funds required to support those functions assigned to the Regional Entities through the delegation agreements) directly from the Load-Serving Entities or their designees or as directed by particular Applicable Governmental Authorities, except where the Regional Entity is required to collect the budget requirements for NERC, in which case the Regional Entity will collect directly from the Load-Serving Entities or as otherwise

³ A Regional Entity may allocate funding obligations using an alternative method approved by NERC and by FERC and other Applicable Governmental Authorities, as provided for in the regional delegation agreement.

provided by agreement and submit funds to NERC. Alternatively, a load-serving entity may pay its allocated ERO costs through a Regional Entity managed collection mechanism.

6. NERC shall set a minimum threshold limit on the billing of small LSEs to minimize the administrative burden of collection.
7. NERC shall pursue any non-payments and shall request assistance from Applicable Governmental Authorities as necessary to secure collection.
8. In the case where a Regional Entity performs the collection for ERO, the Regional Entity will not be responsible for non-payment in the event that a user, owner or operator of the Bulk Power System does not pay its share of dues, fees and charges in a timely manner, provided that such a Regional Entity shall use reasonably diligent efforts to collect dues, fees, and other charges from all entities obligated to pay them. However, any revenues not paid shall be recovered from others within the same Region to avoid cross-subsidization between Regions.
9. Both NERC and the Regional Entities also may bill members or others for functions and services not within statutory requirements or otherwise authorized by the Applicable Governmental Authorities. Costs and revenues associated with these functions and services shall be separately identified and not commingled with billings associated with the funding of NERC or of the Regional Entities for delegated activities.

1107. Penalty Applications

1. Where NERC or a Regional Entity initiates a compliance monitoring and enforcement process that leads to imposition of a Penalty, the entity that initiated the process shall receive any Penalty monies imposed and collected as a result of that process, unless a different disposition of the Penalty monies is provided for in the delegation agreement, or in a contract or a disposition of the violation that is approved by NERC and FERC.
2. All funds from financial Penalties assessed in the United States received by the entity initiating the compliance monitoring and enforcement process shall be applied as a general offset to the entity's budget requirements for the subsequent fiscal year, if received by July 1, or for the second subsequent fiscal year, if received on or after July 1. Funds from financial Penalties shall not be directly applied to any program maintained by the entity conducting the compliance monitoring and enforcement process. Funds from financial Penalties assessed against a Canadian entity shall be applied as specified by legislation or agreement.
3. In the event that a compliance monitoring and enforcement process is conducted jointly by NERC and a Regional Entity, the Regional Entity shall receive the Penalty monies and offset the Regional Entity's budget requirements for the subsequent fiscal year.

4. Exceptions or alternatives to the foregoing provisions will be allowed if approved by NERC and by FERC or any other Applicable Governmental Authority.

1108. Special Assessments

On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next funding cycle, NERC shall file with the Applicable Governmental Authorities, where authorized by applicable legislation or agreement, for authorization for an amended or supplemental budget for NERC or a Regional Entity and, if necessary under the amended or supplemental budget, to collect a special or additional assessment for statutory functions of NERC or the Regional Entity. Such filing shall include supporting materials to justify the requested funding, including any departure from the approved funding formula or method.

SECTION 1200 — REGIONAL DELEGATION AGREEMENTS

1201. Pro Forma Regional Delegation Agreement

NERC shall develop and maintain a pro forma Regional Entity delegation agreement, which shall serve as the basis for negotiation of consistent agreements for the delegation of ERO functions to Regional Entities.

1202. Regional Entity Essential Requirements

NERC shall establish the essential requirements for an entity to become qualified and maintain good standing as a Regional Entity.

1203. Negotiation of Regional Delegation Agreements

NERC shall, for all areas of North America that have provided NERC with the appropriate authority, negotiate regional delegation agreements for the purpose of ensuring all areas of the North American Bulk Power Systems are within a Regional Entity Region. In the event NERC is unable to reach agreement with Regional Entities for all areas, NERC shall provide alternative means and resources for implementing NERC functions within those areas. No delegation agreement shall take effect until it has been approved by the Applicable Governmental Authority.

1204. Conformance to Rules and Terms of Regional Delegation Agreements

NERC and each Regional Entity shall comply with all applicable ERO Rules of Procedure and the obligations stated in the regional delegation agreement.

1205. Sub-delegation

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

1206. Nonconformance to Rules or Terms of Regional Delegation Agreement

If a Regional Entity is unable to comply or is not in compliance with an ERO Rule of Procedure or the terms of the regional delegation agreement, the Regional Entity shall immediately notify NERC in writing, describing the area of nonconformance and the reason for not being able to conform to the Rule of Procedure. NERC shall evaluate each case and inform the affected Regional Entity of the results of the evaluation. If NERC determines that a Rule of Procedure or term of the regional delegation agreement has been violated by a Regional Entity or cannot practically be implemented by a Regional Entity, NERC shall notify the Applicable Governmental Authorities and take any actions necessary to address the situation.

1207. Regional Entity Audits

Approximately every five years and more frequently if necessary for cause, NERC shall audit each Regional Entity to verify that the Regional Entity continues to comply with NERC Rules of Procedure and the obligations of NERC delegation agreement. Audits of Regional Entities shall be conducted, to the extent practical, based on professional auditing standards recognized in the U.S., including Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards, and standards sanctioned by the Institute of Internal Auditors, and if applicable to the coverage of the audit, may be based on Canadian or other international standards. The audits required by this Section 1207 shall not duplicate the audits of Regional Entity Compliance Monitoring and Enforcement Programs provided for in **Appendix 4A**, Audit of Regional Compliance Programs, to these Rules of Procedure.

1208. Process for Considering Registered Entity Requests to Transfer to Another Regional Entity

1. A Registered Entity that is registered in the Region of one Regional Entity and believes its registration should be transferred to a different Regional Entity may submit a written request to both Regional Entities requesting that they process the proposed transfer in accordance with this section. The Registered Entity's written request shall set forth the reasons the Registered Entity believes justify the proposed transfer and shall describe any impacts of the proposed transfer on other Bulk Power System owners, operators, and users.
2. After receiving the Registered Entity's written request, the two Regional Entities shall consult with each other as to whether they agree or disagree that the requested transfer is appropriate. The Regional Entities may also consult with affected Reliability Coordinators, Balancing Authorities and Transmission Operators as appropriate. Each Regional Entity shall post the request on its website for public comment period of 21 days. In evaluating the proposed transfer, the Regional Entities shall consider the location of the Registered Entity's Bulk Power System facilities in relation to the geographic and electrical boundaries of the respective Regions; the impacts of the proposed transfer on other Bulk Power System owners, operators; and users, the impacts of the proposed transfer on the current and future staffing, resources, budgets and assessments to other Load-Serving Entities of each Regional Entity, including the sufficiency of the proposed transferee Regional Entity's staffing and resources to perform compliance monitoring and enforcement activities with respect to the Registered Entity; the Registered Entity's compliance history with its current Regional Entity; and the manner in which pending compliance monitoring and enforcement matters concerning the Registered Entity would be transitioned from the current Regional Entity to the transferee Regional Entity; along with any other reasons for the proposed transfer stated by the Registered Entity and any other reasons either Regional Entity considers relevant. The Regional Entities may

request that the Registered Entity provide additional data and information concerning the proposed transfer for the Regional Entities' use in their evaluation. The Registered Entity's current Regional Entity shall notify the Registered Entity in writing as to whether (i) the two Regional Entities agree that the requested transfer is appropriate, (ii) the two Regional Entities agree that the requested transfer is not appropriate and should not be processed further, or (iii) the two Regional Entities disagree as to whether the proposed transfer is appropriate.

3. If the two Regional Entities agree that the requested transfer is appropriate, they shall submit a joint written request to NERC requesting that the proposed transfer be approved and that the delegation agreement between NERC and each of the Regional Entities be amended accordingly. The Regional Entities' joint written submission to NERC shall describe the reasons for the proposed transfer; the location of the Registered Entity's Bulk Power System Facilities in relation to the geographic and electrical boundaries of the respective Regions; the impacts of the proposed transfer on other Bulk Power System owners, operators, and users; the impacts of the proposed transfer on the current and future staffing, resources, budgets and assessments of each Regional Entity, including the sufficiency of the proposed transferee Regional Entity's staffing and resources to perform compliance monitoring and enforcement activities with respect to the Registered Entity; the Registered Entity's compliance history with its current Regional Entity; and the manner in which pending compliance monitoring and enforcement matters concerning the Registered Entity will be transitioned from the current Regional Entity to the transferee Regional Entity. The NERC Board of Trustees shall consider the proposed transfer based on the submissions of the Regional Entities and any other information the Board considers relevant, and shall approve or disapprove the proposed transfer and the related delegation agreement amendments. The NERC Board may request that the Regional Entities provide additional information, or obtain additional information from the Registered Entity, for the use of the NERC Board in making its decision. If the NERC Board approves the proposed transfer, NERC shall file the related delegation agreements with FERC for approval.
4. If the two Regional Entities do not agree with each other that the proposed transfer is appropriate, the Regional Entity supporting the proposed transfer shall, if requested by the Registered Entity, submit a written request to NERC to approve the transfer and the related delegation agreement amendments. The Regional Entity's written request shall include the information specified in Section 1208.3. The Regional Entity that does not believe the proposed transfer is appropriate will be allowed to submit a written statement to NERC explaining why the Regional Entity believes the transfer is not appropriate and should not be approved. The NERC Board of Trustees shall consider the proposed transfer based on the submissions of the Regional Entities and any other information the Board considers relevant, and shall approve or disapprove the proposed transfer and the related delegation agreement amendments. The NERC Board may request that the Regional Entities provide additional information, or obtain additional

information from the Registered Entity, for the use of the NERC Board in making its decision. If the NERC Board approves the proposed transfer, NERC shall file the related delegation agreements with FERC for approval.

5. Prior to action by the NERC Board of Trustees on a proposed transfer of registration under Section 1208.3 or 1208.4, NERC shall post information concerning the proposed transfer, including the submissions from the Regional Entities, on its website for at least twenty-one (21) days for the purpose of receiving public comment.
6. If the NERC Board of Trustees disapproves a proposed transfer presented to it pursuant to either Section 1208.3 or 1208.4, the Regional Entity or Regional Entities that believe the transfer is appropriate may, if requested to do so by the Registered Entity, file a petition with FERC pursuant to 18 C.F.R. section 39.8(f) and (g) requesting that FERC order amendments to the delegation agreements of the two Regional Entities to effectuate the proposed transfer.
7. No transfer of a Registered Entity from one Regional Entity to another Regional Entity shall be effective (i) unless approved by FERC, and (ii) any earlier than the first day of January of the second calendar year following approval by FERC, unless an earlier effective date is agreed to by both Regional Entities and NERC and approved by FERC.

SECTION 1300 — COMMITTEES

1301. Establishing Standing Committees

The Board may from time to time create standing committees. In doing so, the Board shall approve the charter of each committee and assign specific authority to each committee necessary to conduct business within that charter. Each standing committee shall work within its Board-approved charter and shall be accountable to the Board for performance of its Board-assigned responsibilities. A NERC standing committee may not delegate its assigned work to a member forum, but, in its deliberations, may request the opinions of and consider the recommendations of a member forum.

1302. Committee Membership

Each committee shall have a defined membership composition that is explained in its charter. Committee membership may be unique to each committee, and can provide for balanced decision-making by providing for representatives from each Sector or, where Sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area, by bringing together a wide diversity of opinions from industry experts with outstanding technical knowledge and experience in a particular subject area. Committee membership shall also provide the opportunity for an equitable number of members from the United States and Canada, based approximately on proportionate Net Energy for Load. All committees and other subgroups (except for those organized on other than a Sector basis because Sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area) must ensure that no two stakeholder Sectors are able to control the vote on any matter, and no single Sector is able to defeat a matter. With regard to committees and subgroups pertaining to development of, interpretation of, or compliance with Reliability Standards, NERC shall provide a reasonable opportunity for membership from Sectors desiring to participate. Committees and subgroups organized on other than a Sector basis shall be reported to the NERC Board and the Member Representatives Committee, along with the reasons for constituting the committee or subgroup in the manner chosen. In such cases and subject to reasonable restrictions necessary to accomplish the mission of such committee or subgroup, NERC shall provide a reasonable opportunity for additional participation, as members or official observers, for Sectors not represented on the committee or subgroup.

1303. Procedures for Appointing Committee Members

Committee members shall be nominated and selected in a manner that is open, inclusive, and fair. Unless otherwise stated in these Rules of Procedure or approved by the Board, all committee member appointments shall be approved by the board, and committee officers shall be appointed by the Chairman of the Board.

1304. Procedures for Conduct of Committee Business

1. Notice to the public of the dates, places, and times of meetings of all committees, and all nonconfidential material provided to committee members, shall be posted

on NERC's website at approximately the same time that notice is given to committee members. Meetings of all standing committees shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided that the meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including but not limited to personnel matters, compliance enforcement matters, litigation, or commercially sensitive or Critical Energy Infrastructure Information of any entity.

2. NERC shall maintain a set of procedures, approved by the Board, to guide the conduct of business by standing committees.

1305. Committee Subgroups

Standing committees may appoint subgroups using the same principles as in Section 1302.

SECTION 1400 — AMENDMENTS TO THE NERC RULES OF PROCEDURE

1401. Proposals for Amendment or Repeal of Rules of Procedure

In accordance with the Bylaws of NERC, requests to amend or repeal the Rules of Procedure may be submitted by (1) any fifty Members of NERC, which number shall include Members from at least three membership Sectors, (2) the Member Representatives Committee, (3) a committee of NERC to whose function and purpose the Rule of Procedure pertains, or (4) an officer of NERC.

1402. Approval of Amendment or Repeal of Rules of Procedure

Amendment to or repeal of Rules of Procedure shall be approved by the Board after public notice and opportunity for comment in accordance with the Bylaws of NERC. In approving changes to the Rules of Procedure, the Board shall consider the inputs of the Member Representatives Committee, other ERO committees affected by the particular changes to the Rules of Procedure, and other stakeholders as appropriate. After Board approval, the amendment or repeal shall be submitted to the Applicable Governmental Authorities for approval, where authorized by legislation or agreement. No amendment to or repeal of the Rules of Procedure shall be effective until it has been approved by the Applicable Governmental Authorities.

SECTION 1500 — CONFIDENTIAL INFORMATION

1501. Definitions

1. **Confidential Information** means (i) Confidential Business and Market Information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; or (vi) Cyber Security Incident Information; provided, that public information developed or acquired by an entity shall be excluded from this definition.
2. **Confidential Business and Market Information** means any information that pertains to the interests of any entity, that was developed or acquired by that entity, and that is proprietary or competitively sensitive.
3. **Critical Energy Infrastructure Information** means specific engineering, vulnerability, or detailed design information about proposed or existing Critical Infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on Critical Infrastructure; and (iii) does not simply give the location of the Critical Infrastructure.
4. **Critical Infrastructure** means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.
5. **Cyber Security Incident Information** means any information related to, describing, or which could be used to plan or cause a Cyber Security Incident.

1502. Protection of Confidential Information

1. **Identification of Confidential Information** — An owner, operator, or user of the Bulk Power System and any other party (the “Submitting Entity”) shall mark as confidential any information that it submits to NERC or a Regional Entity (the “Receiving Entity”) that it reasonably believes contains Confidential Information as defined by these Rules of Procedure, indicating the category or categories defined in Section 1501 in which the information falls. If the information is subject to a prohibition on public disclosure in the Commission-approved rules of a regional transmission organization or independent system operator or a similar prohibition in applicable federal, state, or provincial laws, the Submitting Entity shall so indicate and provide supporting references and details.
2. **Confidentiality** — Except as provided herein, a Receiving Entity shall keep in confidence and not copy, disclose, or distribute any Confidential Information or

any part thereof without the permission of the Submitting Entity, except as otherwise legally required.

3. **Information no longer Confidential** – If a Submitting Entity concludes that information for which it had sought confidential treatment no longer qualifies for that treatment, the Submitting Entity shall promptly so notify NERC or the relevant Regional Entity.

1503. Requests for Information

1. **Limitation** — A Receiving Entity shall make information available only to one with a demonstrated need for access to the information from the Receiving Entity.
2. **Form of Request** — A person with such a need may request access to information by using the following procedure:
 - 2.1 The request must be in writing and clearly marked “Request for Information.”
 - 2.2 The request must identify the individual or entity that will use the information, explain the requester’s need for access to the information, explain how the requester will use the information in furtherance of that need, and state whether the information is publicly available or available from another source or through another means. If the requester seeks access to information that is subject to a prohibition on public disclosure in the Commission-approved rules of a regional transmission organization or independent system operator or a similar prohibition in applicable federal, state, or provincial laws, the requester shall describe how it qualifies to receive such information.
 - 2.3 The request must stipulate that, if the requester does not seek public disclosure, the requester will maintain as confidential any information received for which a Submitting Party has made a claim of confidentiality in accordance with NERC’s rules. As a condition to gaining access to such information, a requester shall execute a non-disclosure agreement in a form approved by NERC’s Board of Trustees.
3. **Notice and Opportunity for Comment** — Prior to any decision to disclose information marked as confidential, the Receiving Entity shall provide written notice to the Submitting Entity and an opportunity for the Submitting Entity to either waive objection to disclosure or provide comments as to why the Confidential Information should not be disclosed. Failure to provide such comments or otherwise respond is not deemed waiver of the claim of confidentiality.
4. **Determination by ERO or Regional Entity** — Based on the information provided by the requester under Rule 1503.2, any comments provided by the Submitting Entity, and any other relevant available information, the chief

executive officer or his or her designee of the Receiving Entity shall determine whether to disclose such information.

5. **Appeal** — A person whose request for information is denied in whole or part may appeal that determination to the President of NERC (or the President’s designee) within 30 days of the determination. Appeals filed pursuant to this Section must be in writing, addressed to the President of NERC (or the President’s designee), and clearly marked “Appeal of Information Request Denial.”

NERC will provide written notice of such appeal to the Submitting Entity and an opportunity for the Submitting Entity to either waive objection to disclosure or provide comments as to why the Confidential Information should not be disclosed; provided that any such comments must be received within 30 days of the notice and any failure to provide such comments or otherwise respond is not deemed a waiver of the claim of confidentiality.

The President of NERC (or the President’s designee) will make a determination with respect to any appeal within 30 days. In unusual circumstances, this time limit may be extended by the President of NERC (or the President’s designee), who will send written notice to the requester setting forth the reasons for the extension and the date on which a determination on the appeal is expected.

6. **Disclosure of Information** — In the event the Receiving Entity, after following the procedures herein, determines to disclose information designated as Confidential Information, it shall provide the Submitting Entity no fewer than 21 days’ written notice prior to releasing the Confidential Information in order to enable such Submitting Entity to (a) seek an appropriate protective order or other remedy, (b) consult with the Receiving Entity with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. Should a Receiving Entity be required to disclose Confidential Information, or should the Submitting Entity waive objection to disclosure, the Receiving Entity shall furnish only that portion of the Confidential Information which the Receiving Entity’s counsel advises is legally required.
7. **Posting of Determinations on Requests for Disclosure of Confidential Information** — Upon making its determination on a request for disclosure of Confidential Information, NERC or the Regional Entity, as applicable, shall (i) notify the requester that the request for disclosure is granted or denied, (ii) publicly post any determination to deny the request to disclose Confidential Information, including in such posting an explanation of the reasons for the denial (but without in such explanation disclosing the Confidential Information), and (iii) publicly post any determination that information claimed by the Submitting Entity to be Confidential Information is not Confidential Information (but without in such posting disclosing any information that has been determined to be Confidential Information).

1504. Employees, Contractors and Agents

A Receiving Entity shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

1505. Provision of Information to FERC and Other Governmental Authorities

1. **Request** — A request from FERC for reliability information with respect to owners, operators, and users of the Bulk Power System within the United States is authorized by Section 215 of the Federal Power Act. Other Applicable Governmental Authorities may have similar authorizing legislation that grants a right of access to such information. Unless otherwise directed by FERC or its staff or the other Applicable Governmental Authority requesting the information, upon receiving such a request, a Receiving Entity shall provide contemporaneous notice to the applicable Submitting Entity. In its response to such a request, a Receiving Entity shall preserve any mark of confidentiality and shall notify FERC or other Applicable Governmental Authorities that the Submitting Entity has marked the information as confidential.
2. **Continued Confidentiality** — Each Receiving Entity shall continue to treat as confidential all Confidential Information that it has submitted to NERC or to FERC or another Applicable Governmental Authority, until such time as FERC or the other Applicable Governmental Authority authorizes disclosure of such information.

1506. Permitted Disclosures

1. **Confirmed Violations** — Nothing in this Section 1500 shall prohibit the disclosure of a violation at the point when the matter is filed with an Applicable Governmental Authority as a Notice of Penalty, the “violator” admits to the violation, or the alleged violator and NERC or the Regional Entity reach a settlement regarding the violation.
2. **Compliance Information** — NERC and the Regional Entities are authorized to exchange Confidential Information related to evaluations, Compliance Audits, and Compliance Investigations in furtherance of the Compliance Monitoring and Enforcement Program, on condition they continue to maintain the confidentiality of such information.

1507. Remedies for Improper Disclosure

Any person engaged in NERC or Regional Entity activity under Section 215 of the Federal Power Act or the equivalent laws of other Applicable Governmental Authorities who improperly discloses information determined to be confidential may lose access to Confidential Information on a temporary or permanent basis and may be subject to adverse personnel action, including suspension or termination. Nothing in Section 1500

precludes an entity whose information was improperly disclosed from seeking a remedy in an appropriate court.

SECTION 1600 — REQUESTS FOR DATA OR INFORMATION

1601. Scope of a NERC or Regional Entity Request for Data or Information

Within the United States, NERC and Regional Entities may request data or information that is necessary to meet their obligations under Section 215 of the Federal Power Act, as authorized by Section 39.2(d) of the Commission’s regulations, 18 C.F.R. § 39.2(d). In other jurisdictions NERC and Regional Entities may request comparable data or information, using such authority as may exist pursuant to these Rules of Procedure and as may be granted by Applicable Governmental Authorities in those other jurisdictions. The provisions of Section 1600 shall not apply to Requirements contained in any Reliability Standard to provide data or information; the Requirements in the Reliability Standards govern. The provisions of Section 1600 shall also not apply to data or information requested in connection with a compliance or enforcement action under Section 215 of the Federal Power Act, Section 400 of these Rules of Procedure, or any procedures adopted pursuant to those authorities, in which case the Rules of Procedure applicable to the production of data or information for compliance and enforcement actions shall apply.

1602. Procedure for Authorizing a NERC Request for Data or Information

1. NERC shall provide a proposed request for data or information or a proposed modification to a previously-authorized request, including the information specified in Section 1602.2.1 or 1602.2.2 as applicable, to the Commission’s Office of Electric Reliability at least twenty-one (21) days prior to initially posting the request or modification for public comment. Submission of the proposed request or modification to the Office of Electric Reliability is for the information of the Commission. NERC is not required to receive any approval from the Commission prior to posting the proposed request or modification for public comment in accordance with Section 1602.2 or issuing the request or modification to Reporting Entities following approval by the Board of Trustees.
2. NERC shall post a proposed request for data or information or a proposed modification to a previously authorized request for data or information for a forty-five (45) day public comment period.
 - 2.1. A proposed request for data or information shall contain, at a minimum, the following information: (i) a description of the data or information to be requested, how the data or information will be used, and how the availability of the data or information is necessary for NERC to meet its obligations under applicable laws and agreements; (ii) a description of how the data or information will be collected and validated; (iii) a description of the entities (by functional class and jurisdiction) that will be required to provide the data or information (“Reporting Entities”); (iv) the schedule or due date for the data or information; (v) a description of any restrictions on disseminating the data or information (e.g., “Confidential Information,” “Critical Energy Infrastructure Information,”

“aggregating” or “identity masking”); and (vi) an estimate of the relative burden imposed on the Reporting Entities to accommodate the data or information request.

- 2.2. A proposed modification to a previously authorized request for data or information shall explain (i) the nature of the modifications; (ii) an estimate of the burden imposed on the Reporting Entities to accommodate the modified data or information request, and (iii) any other items from Section 1602.2.1 that require updating as a result of the modifications.
3. After the close of the comment period, NERC shall make such revisions to the proposed request for data or information as are appropriate in light of the comments. NERC shall submit the proposed request for data or information, as revised, along with the comments received, NERC’s evaluation of the comments and recommendations, to the Board of Trustees.
4. In acting on the proposed request for data or information, the Board of Trustees may authorize NERC to issue it, modify it, or remand it for further consideration.
5. NERC may make minor changes to an authorized request for data or information without Board approval. However, if a Reporting Entity objects to NERC in writing to such changes within 21 days of issuance of the modified request, such changes shall require Board approval before they are implemented.
6. Authorization of a request for data or information shall be final unless, within thirty (30) days of the decision by the Board of Trustees, an affected party appeals the authorization under this Section 1600 to the Applicable Governmental Authority.

1603. Owners, Operators, and Users to Comply

Owners, operators, and users of the Bulk Power System registered on the NERC Compliance Registry shall comply with authorized requests for data and information. In the event a Reporting Entity within the United States fails to comply with an authorized request for data or information under Section 1600, NERC may request the Commission to exercise its enforcement authority to require the Reporting Entity to comply with the request for data or information and for other appropriate enforcement action by the Commission. NERC will make any request for the Commission to enforce a request for data or information through a non-public submission to the Commission’s enforcement staff.

1604. Requests by Regional Entity for Data or Information

1. A Regional Entity may request that NERC seek authorization for a request for data or information to be applicable within the Region of the Regional Entity, either as a freestanding request or as part of a proposed NERC request for data or information. Any such request must be consistent with this Section 1600.

2. A Regional Entity may also develop its own procedures for requesting data or information, but any such procedures must include at least the same procedural elements as are included in this Section 1600. Any such Regional Entity procedures or changes to such procedures shall be submitted to NERC for approval. Upon approving such procedures or changes thereto, NERC shall file the proposed procedures or proposed changes for approval by the Commission and any other Applicable Governmental Authorities applicable to the Regional Entity. The Regional Entity procedures or changes to such procedures shall not be effective in a jurisdiction until approved by, and in accordance with any revisions directed by, the Commission or other Applicable Governmental Authority.

1605. Confidentiality

If the approved data or information request includes a statement under Section 1602.1.1(v) that the requested data or information will be held confidential or treated as Critical Energy Infrastructure Information, then the applicable provisions of Section 1500 will apply without further action by a Submitting Entity. A Submitting Entity may designate any other data or information as Confidential Information pursuant to the provisions of Section 1500, and NERC or the Regional Entity shall treat that data or information in accordance with Section 1500. NERC or a Regional Entity may utilize additional protective procedures for handling particular requests for data or information as may be necessary under the circumstances.

1606. Expedited Procedures for Requesting Time-Sensitive Data or Information

1. In the event NERC or a Regional Entity must obtain data or information by a date or within a time period that does not permit adherence to the time periods specified in Section 1602, the procedures specified in Section 1606 may be used to obtain the data or information. Without limiting the circumstances in which the procedures in Section 1606 may be used, such circumstances include situations in which it is necessary to obtain the data or information (in order to evaluate a threat to the reliability or security of the Bulk Power System, or to comply with a directive in an order issued by the Commission or by another Applicable Governmental Authority) within a shorter time period than possible under Section 1602. The procedures specified in Section 1606 may only be used if authorized by the NERC Board of Trustees prior to activation of such procedures.
2. Prior to posting a proposed request for data or information, or a modification to a previously-authorized request, for public comment under Section 1606, NERC shall provide the proposed request or modification, including the information specified in paragraph 1602.2.1 or 1602.2.2 as applicable, to the Commission's Office of Electric Reliability. The submission to the Commission's Office of Electric Reliability shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information. The submission shall be made to the Commission's Office of Electric Reliability as far in advance, up to twenty-one (21) days, of the posting of the proposed request or modification for public comments as is

- reasonably possible under the circumstances, but in no event less than two (2) days in advance of the public posting of the proposed request or modification.
3. NERC shall post the proposed request for data or information or proposed modification to a previously-authorized request for data or information for a public comment period that is reasonable in duration given the circumstances, but in no event shorter than five (5) days. The proposed request for data or information or proposed modification to a previously-authorized request for data or information shall include the information specified in Section 1602.2.1 or 1602.2.2, as applicable, and shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information.
 4. The provisions of Sections 1602.3, 1602.4, 1602.5 and 1602.6 shall be applicable to a request for data or information or modification to a previously-authorized request for data or information developed and issued pursuant to Section 1606, except that (a) if NERC makes minor changes to an authorized request for data or information without Board approval, such changes shall require Board approval if a Reporting Entity objects to NERC in writing to such changes within five (5) days of issuance of the modified request; and (b) authorization of the request for data or information shall be final unless an affected party appeals the authorization of the request by the Board of Trustees to the Applicable Governmental Authority within five (5) days following the decision of the Board of Trustees authorizing the request, which decision shall be promptly posted on NERC's website.

SECTION 1700 — CHALLENGES TO DETERMINATIONS

1701. Scope of Authority

Section 1702 sets forth the procedures to be followed for Registered Entities to challenge determinations made by Planning Coordinators under Reliability Standard PRC-023. Section 1703 sets forth the procedures to be followed when a Submitting Entity or Owner wishes to challenge a determination by NERC to approve or to disapprove an Exception Request or to terminate an Exception under Section 509.

1702. Challenges to Determinations by Planning Coordinators Under Reliability Standard PRC-023

1. This Section 1702 establishes the procedures to be followed when a Registered Entity wishes to challenge a determination by a Planning Coordinator of the sub-200 kV circuits in its Planning Coordinator area for which Transmission Owners, Generator Owners, and Distribution Providers (defined as “Registered Entities” for purposes of this Section 1702) must comply with the requirements of Reliability Standard PRC-023.
2. Planning Coordinator Procedures
 - 2.1 Each Planning Coordinator shall establish a procedure for a Registered Entity to submit a written request for an explanation of a determination made by the Planning Coordinator under PRC-023.
 - 2.2 A Registered Entity shall follow the procedure established by the Planning Coordinator for submitting the request for explanation and must submit any such request within 60 days of receiving the determination under PRC-023 from the Planning Coordinator.
 - 2.3 Within 30 days of receiving a written request from a Registered Entity, the Planning Coordinator shall provide the Registered Entity with a written explanation of the basis for its determination under PRC-023, unless the Planning Coordinator provided a written explanation of the basis for its determination when it initially informed the Registered Entity of its determination.
3. A Registered Entity may challenge the determination of the Planning Coordinator by filing with the appropriate Regional Entity, with a copy to the Planning Coordinator, within 60 days of receiving the written explanation from the Planning Coordinator. The challenge shall include the following: (a) an explanation of the technical reasons for its disagreement with the Planning Coordinator’s determination, along with any supporting documentation, and (b) a copy of the Planning Coordinator’s written explanation. Within 30 days of receipt of a challenge, the Planning Coordinator may file a response to the Regional Entity, with a copy to the Registered Entity.

4. The filing of a challenge in good faith shall toll the time period for compliance with PRC-023 with respect to the subject facility until such time as the challenge is withdrawn, settled or resolved.
5. The Regional Entity shall issue its written decision setting forth the basis of its determination within 90 days after it receives the challenge and send copies of the decision to the Registered Entity and the Planning Coordinator. The Regional Entity may convene a meeting of the involved entities and may request additional information. The Regional Entity shall affirm the determination of the Planning Coordinator if it is supported by substantial evidence.
6. A Planning Coordinator or Registered Entity affected by the decision of the Regional Entity may, within 30 days of the decision, file an appeal with NERC, with copies to the Regional Entity and the Planning Coordinator or Registered Entity. The appeal shall state the basis of the objection to the decision of the Regional Entity and shall include the Regional Entity decision, the written explanation of the Planning Coordinator's determination under PRC-023, and the documents and reasoning filed by the Registered Entity with the Regional Entity in support of its objection. The Regional Entity, Planning Coordinator or Registered Entity may file a response to the appeal within 30 days of the appeal.
7. The Board of Trustees shall appoint a panel to decide appeals from Regional Entity decisions under Section 1702.5. The panel, which may contain alternates, shall consist of at least three appointees, one of whom must be a member of the NERC staff, who are knowledgeable about PRC-023 and transmission planning and do not have a direct financial or business interest in the outcome of the appeal. The panel shall decide the appeal within 90 days of receiving the appeal from the decision of the Regional Entity and shall affirm the determination of the Planning Coordinator if it is supported by substantial evidence.
8. The Planning Coordinator or Registered Entity affected by the decision of the panel may request that the Board of Trustees review the decision by filing its request for review and a statement of reasons with NERC's Chief Reliability Officer within 30 days of the panel decision. The Board of Trustees may, in its discretion, decline to review the decision of the panel, in which case the decision of the panel shall be the final NERC decision. Within 90 days of the request for review under this Section 1702.8, the Board of Trustees may either (a) issue a decision on the merits, which shall be the final NERC decision, or (b) issue a notice declining to review the decision of the panel, in which case the decision of the panel shall be the final NERC decision. If no written decision or notice declining review is issued within 90 calendar days, the appeal shall be deemed to have been denied by the Board of Trustees and this will have the same effect as a notice declining review.
9. The Registered Entity or Planning Coordinator may appeal the final NERC decision to the Applicable Governmental Authority within 30 days of receipt of

the Board of Trustees' final decision or notice declining review, or expiration of the 90-day review period without any action by NERC.

10. The Planning Coordinator and Registered Entity are encouraged, but not required, to meet to resolve any dispute, including use of mutually agreed to alternative dispute resolution procedures, at any time during the course of the matter. In the event resolution occurs after the filing of a challenge, the Registered Entity and Planning Coordinator shall jointly provide to the applicable Regional Entity a written acknowledgement of withdrawal of the challenge or appeal, including a statement that all outstanding issues have been resolved.

1703. Challenges to NERC Determinations of BES Exception Requests Under Section 509

1. This Section 1703 establishes the procedures to be followed when a Submitting Entity or Owner wishes to challenge a determination by NERC to approve or to disapprove an Exception Request or to terminate an Exception under Section 509.
2. A Submitting Entity (or Owner if different) aggrieved by the decision of NERC to approve or disapprove an Exception Request or to terminate an Exception with respect to any Element may, within 30 days following the date of the decision, file a written challenge to the decision with the NERC director of compliance operations, with copies to the Regional Entity and the Submitting Entity or Owner if different. The challenge shall state the basis of the objection to the decision of NERC. The Regional Entity, and the Submitting Entity or Owner if different, may file a response to the challenge within 30 days following the date the challenge is filed with NERC.
3. The challenge shall be decided by the Board of Trustees Compliance Committee. Within 90 days of the date of submission of the challenge, the Board of Trustees Compliance Committee shall issue its decision on the challenge. The decision of the Board of Trustees Compliance Committee shall be the final NERC decision; provided, that the Board of Trustees Compliance Committee may extend the deadline date for its decision to a date more than 90 days following submission of the challenge, by issuing a notice to the Submitting Entity, the Owner (if different) and the Regional Entity stating the revised deadline date and the reason for the extension.
4. The Submitting Entity, or Owner if different, may appeal the final NERC decision to, or seek review of the final NERC decision by, the Applicable Governmental Authority(ies), in accordance with the legal authority and rules and procedures of the Applicable Governmental Authority(ies). Any such appeal shall be filed within thirty (30) days following the date of the decision of the Board of Trustees Compliance Committee, or within such other time period as is provided for in the legal authority, rules or procedures of the Applicable Governmental Authority.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

ATTACHMENT 1B

REVISED RULES OF PROCEDURE SECTIONS 100-1700

REDLINED VERSION

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

Proposed Revisions 5-04-2012
[Incorporates proposed revisions filed with FERC
on January 25, 2012]

Rules of Procedure

Effective: March 15, 2012

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SECTION 100 — APPLICABILITY OF RULES OF PROCEDURE

NERC and NERC Members shall comply with these Rules of Procedure. Each Regional Entity shall comply with these Rules of Procedure as applicable to functions delegated to the Regional Entity by NERC or as required by an Applicable Governmental Authority or as otherwise provided.

Each Bulk Power System owner, operator, and user shall comply with all Rules of Procedure of NERC that are made applicable to such entities by approval pursuant to applicable legislation or regulation, or pursuant to agreement.

Any entity that is unable to comply or that is not in compliance with a NERC Rule of Procedure shall immediately notify NERC in writing, stating the Rule of Procedure of concern and the reason for not being able to comply with the Rule of Procedure.

NERC shall evaluate each case and inform the entity of the results of the evaluation. If NERC determines that a Rule of Procedure has been violated, or cannot practically be complied with, NERC shall notify the Applicable Governmental Authorities and take such other actions as NERC deems appropriate to address the situation.

NERC shall comply with each approved Reliability Standard that identifies NERC or the Electric Reliability Organization as a responsible entity. Regional Entities shall comply with each approved Reliability Standard that identifies Regional Entities as responsible entities. A violation by NERC or a Regional Entity of such a Reliability Standard shall constitute a violation of these Rules of Procedure.

SECTION 200 — DEFINITIONS OF TERMS

Definitions of terms used in the NERC Rules of Procedure are set forth in **Appendix 2, *Definitions Used in the Rules of Procedure.***

SECTION 300 — RELIABILITY STANDARDS DEVELOPMENT

301. General

NERC shall develop and maintain Reliability Standards that apply to Bulk Power System owners, operators, and users and that enable NERC and Regional Entities to measure the reliability performance of Bulk Power System owners, operators, and users; and to hold them accountable for Reliable Operation of the Bulk Power Systems. The Reliability Standards shall be technically excellent, timely, just, reasonable, not unduly discriminatory or preferential, in the public interest, and consistent with other applicable standards of governmental authorities.

302. Essential Attributes for Technically Excellent Reliability Standards

1. **Applicability** — Each Reliability Standard shall clearly identify the functional classes of entities responsible for complying with the Reliability Standard, with any specific additions or exceptions noted. Such functional classes¹ include: Reliability Coordinators, Balancing Authorities, Transmission Operators, Transmission Owners, Generator Operators, Generator Owners, Interchange Authorities, Transmission Service Providers, market operators, Planning Authorities, Transmission Planners, Resource Planners, Load-Serving Entities, Purchasing-Selling Entities, and Distribution Providers. Each Reliability Standard shall also identify the geographic applicability of the Reliability Standard, such as the entire North American Bulk Power System, an Interconnection, or within a Region. A Reliability Standard may also identify any limitations on the applicability of the Reliability Standard based on electric Facility characteristics.
2. **Reliability Objectives** — Each Reliability Standard shall have a clear statement of purpose that shall describe how the Reliability Standard contributes to the reliability of the Bulk Power System. The following general objectives for the Bulk Power System provide a foundation for determining the specific objective(s) of each Reliability Standard:
 - 2.1 **Reliability Planning and Operating Performance**— Bulk Power Systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions.
 - 2.2 **Frequency and Voltage Performance**— The frequency and voltage of Bulk Power Systems shall be controlled within defined limits through the balancing of Real and Reactive Power supply and demand.

¹ These functional classes of entities are derived from NERC's Reliability Functional Model. When a Reliability Standard identifies a class of entities to which it applies, that class must be defined in the Glossary of Terms Used in NERC Reliability Standards.

- 2.3 **Reliability Information** — Information necessary for the planning and operation of reliable Bulk Power Systems shall be made available to those entities responsible for planning and operating Bulk Power Systems.
 - 2.4 **Emergency Preparation** — Plans for emergency operation and system restoration of Bulk Power Systems shall be developed, coordinated, maintained, and implemented.
 - 2.5 **Communications and Control** — Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of Bulk Power Systems.
 - 2.6 **Personnel** — Personnel responsible for planning and operating Bulk Power Systems shall be trained and qualified, and shall have the responsibility and authority to implement actions.
 - 2.7 **Wide-Area View** — The reliability of the Bulk Power Systems shall be assessed, monitored, and maintained on a Wide-Area basis.
 - 2.8 **Security** — Bulk Power Systems shall be protected from malicious physical or cyber attacks.
3. **Performance Requirement or Outcome**— Each Reliability Standard shall state one or more performance Requirements, which if achieved by the applicable entities, will provide for a reliable Bulk Power System, consistent with good utility practices and the public interest. Each Requirement is not a “lowest common denominator” compromise, but instead achieves an objective that is the best approach for Bulk Power System reliability, taking account of the costs and benefits of implementing the proposal.
 4. **Measurability** — Each performance Requirement shall be stated so as to be objectively measurable by a third party with knowledge or expertise in the area addressed by that Requirement. Each performance Requirement shall have one or more associated measures used to objectively evaluate compliance with the Requirement. If performance can be practically measured quantitatively, metrics shall be provided to determine satisfactory performance.
 5. **Technical Basis in Engineering and Operations**— Each Reliability Standard shall be based upon sound engineering and operating judgment, analysis, or experience, as determined by expert practitioners in that particular field.
 6. **Completeness** — Reliability Standards shall be complete and self-contained. The Reliability Standards shall not depend on external information to determine the required level of performance.

7. **Consequences for Noncompliance** — In combination with guidelines for Penalties and sanctions, as well as other ERO and Regional Entity compliance documents, the consequences of violating a Reliability Standard are clearly presented to the entities responsible for complying with the Reliability Standards.
8. **Clear Language** — Each Reliability Standard shall be stated using clear and unambiguous language. Responsible entities, using reasonable judgment and in keeping with good utility practices, are able to arrive at a consistent interpretation of the required performance.
9. **Practicality** — Each Reliability Standard shall establish Requirements that can be practically implemented by the assigned responsible entities within the specified effective date and thereafter.
10. **Consistent Terminology** — To the extent possible, Reliability Standards shall use a set of standard terms and definitions that are approved through the NERC Reliability Standards development process.

303. Relationship between Reliability Standards and Competition

To ensure Reliability Standards are developed with due consideration of impacts on competition, to ensure Reliability Standards are not unduly discriminatory or preferential, and recognizing that reliability is an essential requirement of a robust North American economy, each Reliability Standard shall meet all of these market-related objectives:

1. **Competition** — A Reliability Standard shall not give any market participant an unfair competitive advantage.
2. **Market Structures** — A Reliability Standard shall neither mandate nor prohibit any specific market structure.
3. **Market Solutions** — A Reliability Standard shall not preclude market solutions to achieving compliance with that Reliability Standard.
4. **Commercially Sensitive Information** — A Reliability Standard shall not require the public disclosure of commercially sensitive information or other Confidential Information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with Reliability Standards.
5. **Adequacy** — NERC shall not set Reliability Standards defining an adequate amount of, or requiring expansion of, Bulk Power System resources or delivery capability.

304. Essential Principles for the Development of Reliability Standards

NERC shall develop Reliability Standards in accordance with the NERC *Standard Processes Manual*, which is incorporated into these Rules of Procedure as **Appendix 3A**. Appeals in connection with the development of a Reliability Standard shall also be conducted in accordance with the NERC *Standard Processes Manual*. Any amendments or revisions to the *Standard Processes Manual* shall be consistent with the following essential principles:

1. **Openness** — Participation shall be open to all Persons who are directly and materially affected by the reliability of the North American Bulk Power System. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in NERC or any other organization, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements.
2. **Transparency** — The process shall be transparent to the public.
3. **Consensus-building** — The process shall build and document consensus for each Reliability Standard, both with regard to the need and justification for the Reliability Standard and the content of the Reliability Standard.
4. **Fair Balance of Interests** — The process shall fairly balance 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.](#)
5. **Due Process** — Development of Reliability Standards shall provide reasonable notice and opportunity for any Person with a direct and material interest to express views on a proposed Reliability Standard and the basis for those views, and to have that position considered in the development of the Reliability Standards.
6. **Timeliness** — Development of Reliability Standards shall be timely and responsive to new and changing priorities for reliability of the Bulk Power System.

305. Registered Ballot Body

NERC Reliability Standards shall be approved by a Registered Ballot Body prior to submittal to the Board and then to Applicable Governmental Authorities for their approval, where authorized by applicable legislation or agreement. This Section 305 sets forth the rules pertaining to the composition of, and eligibility to participate in, the Registered Ballot Body.

1. **Eligibility to Vote on Reliability Standards** — Any person or entity may join the Registered Ballot Body to vote on Reliability Standards, whether or not such person or entity is a Member of NERC.
2. **Inclusive Participation** — The Segment qualification guidelines are inclusive; i.e., any entity with a legitimate interest in the reliability of the Bulk Power System that can meet any one of the eligibility criteria for a Segment is entitled to belong to and vote in each Segment for which it qualifies, subject to limitations defined in Sections 305.3 and 305.5.
3. **General Criteria for Registered Ballot Body Membership** — The general criteria for membership in the Segments are:
 - 3.1 **Multiple Segments** — A corporation or other organization with integrated operations or with affiliates that qualifies to belong to more than one Segment (e.g., Transmission Owners and Load-Serving Entities) may join once in each Segment for which it qualifies, provided that each Segment constitutes a separate membership and the organization is represented in each Segment by a different representative. Affiliated entities are collectively limited to one membership in each Segment for which they are qualified.
 - 3.2 **Withdrawing from a Segment or Changing Segments** — After its initial registration in a Segment, each registered participant may elect to withdraw from a Segment or apply to change Segments at any time.
 - 3.3 **Review of Segment Criteria** — The Board shall review the qualification guidelines and rules for joining Segments at least every three years to ensure that the process continues to be fair, open, balanced, and inclusive. Public input will be solicited in the review of these guidelines.
4. **Proxies for Voting on Reliability Standards** — Any registered participant may designate an agent or proxy to vote on its behalf. There are no limits on how many proxies an agent may hold. However, for the proxy to be valid, NERC must have in its possession written documentation signed by the representative of the registered participant that the voting right by proxy has been transferred from the registered participant to the agent.
5. **Segments** — The specific criteria for membership in each Registered Ballot Body Segment are defined in the [Standard Processes Manual](#) [Development of the Registered Ballot Body](#) in **Appendix 3A3D**.
6. **Review of Segment Entries** — NERC shall review all applications for joining the Registered Ballot Body, and shall make a determination of whether the applicant's self-selection of a Segment satisfies at least one of the guidelines to

belong to that Segment. The entity shall then become eligible to participate as a voting member of that Segment. The Standards Committee shall resolve disputes regarding eligibility for membership in a Segment, with the applicant having the right of appeal to the Board.

306. Standards Committee

The Standards Committee shall provide oversight of the Reliability Standards development process to ensure stakeholder interests are fairly represented. The Standards Committee shall not under any circumstance change the substance of a draft or approved Reliability Standard.

1. **Membership** — The Standards Committee is a representative committee comprising representatives of two members of each of the Segments in the Registered Ballot Body and two officers elected to represent the interests of the industry as a whole.
2. **Elections** — Standards Committee members are elected for staggered (one per Segment per year) two-year terms by the respective Segments in accordance with the *Procedure for the Election of Members of the NERC Standards Committee*, which is incorporated into these Rules of Procedure as **Appendix 3B**. Segments may use their own election procedure if such a procedure is ratified by two-thirds of the members of a Segment and approved by the Board.
3. **Canadian Representation**

The Standards Committee will include Canadian representation as provided in **Appendix 3B**, *Procedure for the Election of Members of the NERC Standards Committee*.

~~3.1 **Provision for Sufficient Canadian Representation** — If any regular election of Standards Committee members does not result in at least two Canadian members on the Standards Committee, the Canadian nominees who were not elected but who received the next highest percentage of votes within their respective Segment(s) will be designated as additional members of the Standards Committee, as needed to achieve a total of two Canadian members.~~

~~3.2 **Terms of Specially Designated Canadian Members** — Each specially designated Canadian member of the Standards Committee shall have a term ending with the next annual election.~~

~~3.3 **Segment Preference** — If any Segment has an unfilled representative position on the Standards Committee following the annual election, the first preference is to assign each specially designated Canadian representative~~

~~to a Segment with an unfilled representative position for which his or her organization qualifies.~~

~~3.4 Rights of Specially Designated Canadian Members — Any specially designated Canadian members of the Standards Committee shall have the same rights and obligations as all other members of the Standards Committee.~~

4. **Open Meetings** — All meetings of the Standards Committee shall be open and publicly noticed on the NERC website.

307. Standards Process ~~Management~~ **Manager**

NERC shall assign a standards process manager to administer the development of continent-wide Reliability Standards and a regional standards manager to administer the development of Regional Reliability Standards. The standards process manager shall be responsible for ensuring that the development and revision of Reliability Standards are in accordance with the NERC *Standard Processes Manual*. The standards process manager and the regional standards manager shall work to achieve the highest degree of integrity and consistency of quality and completeness of the Reliability Standards. The regional standards process manager shall coordinate with any Regional Entities that develop Regional Reliability Standards to ensure those Regional Reliability Standards are effectively integrated with the NERC Reliability Standards.

308. Steps in the Development of Reliability Standards

1. **Procedure** — NERC shall develop Reliability Standards through the process set forth in the NERC *Standard Processes Manual* (**Appendix 3A**). The ~~procedure~~ Standard Processes Manual includes ~~a~~ provisions for ~~developing approval of urgent action~~ Reliability Standards that can be completed using expedited processes, including a process to develop Reliability Standards to address national security situations that involve confidential issues within 60 days and emergency actions that may be further expedited.
2. **Board ~~Adoption~~ Approval** — Reliability Standards or revisions to Reliability Standards approved by the ballot pool in accordance with the *Standard Processes Manual* shall be submitted for ~~adoption~~ approval by the Board. No Reliability Standard or revision to a Reliability Standard shall be effective unless ~~adopted~~ approved by the Board.
3. **Governmental Approval** — After ~~receiving~~ Board ~~approval~~ adoption, a Reliability Standard or revision to a Reliability Standard shall be submitted to all Applicable Governmental Authorities in accordance with Section 309. No Reliability Standard or revision to a Reliability Standard shall be effective within a geographic area over which an Applicable Governmental Authority has

jurisdiction unless [it is](#) approved by such Applicable Governmental Authority or is otherwise made effective pursuant to the laws applicable to such Applicable Governmental Authority.

309. Filing of Reliability Standards for Approval by Applicable Governmental Authorities

1. **Filing of Reliability Standards for Approval** — Where authorized by applicable legislation or agreement, NERC shall file with the Applicable Governmental Authorities each Reliability Standard, modification to a Reliability Standard, or withdrawal of a Reliability Standard that is ~~adopted~~[approved](#) by the Board. Each filing shall be in the format required by the Applicable Governmental Authority and shall include: a concise statement of the basis and purpose of the Reliability Standard; the text of the Reliability Standard; the implementation plan for the Reliability Standard; a demonstration that the Reliability Standard meets the essential attributes of Reliability Standards as stated in Section 302; the drafting team roster; the ballot pool and final ballot results; and a discussion of public comments received during the development of the Reliability Standard and the consideration of those comments.
2. **Remanded Reliability Standards and Directives to Develop Standards** — If an Applicable Governmental Authority remands a Reliability Standard to NERC or directs NERC to develop a Reliability Standard, NERC shall within five (5) business days notify all other Applicable Governmental Authorities, and shall within thirty (30) calendar days report to all Applicable Governmental Authorities a plan and timetable for modification or development of the Reliability Standard. Reliability Standards that are remanded or directed by an Applicable Governmental Authority shall be modified or developed using the *Standard Processes Manual*. NERC shall, during the development of a modification for the remanded Reliability Standard or directed Reliability Standard, consult with other Applicable Governmental Authorities to coordinate any impacts of the proposed Reliability Standards in those other jurisdictions. The expedited ~~standards development process~~[action procedure](#) may be applied if necessary to meet a timetable for action required by the Applicable Governmental Authorities, respecting to the extent possible the provisions in the Reliability Standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interest in developing Reliability Standards. If the Board of Trustees determines that the process did not result in a Reliability Standard that addresses a specific matter that is identified in a directive issued by an Applicable Governmental Authority, then Rule 321 of these Rules of Procedure shall apply.
3. **Directives to Develop Reliability Standards under Extraordinary Circumstances** — An Applicable Governmental Authority may, on its own initiative, determine that extraordinary circumstances exist requiring expedited

development of a Reliability Standard. In such a case, the Applicable Governmental Authority may direct the development of a Reliability Standard within a certain deadline. NERC staff shall prepare the Standards Authorization Request ~~and seek a stakeholder sponsor for the request. If NERC is unable to find a sponsor for the proposed Reliability Standard, NERC will be designated as the requestor.~~ The proposed Reliability Standard will then proceed through the Reliability Standards development process, using the expedited action ~~process~~procedures described in the *Standard Processes Manual* as necessary to meet the specified deadline. The timeline will be developed to respect, to the extent possible, the provisions in the Reliability Standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in developing Reliability Standards. If the Board of Trustees determines that the process did not result in a Reliability Standard that addresses a specific matter that is identified in a directive issued by an Applicable Governmental Authority, then Rule 321 of these Rules of Procedure shall apply, with appropriate modification of the timeline.

~~3.1 Consistent with all Reliability Standards developed under the expedited action process, each of the three possible follow-up actions as documented in the *Standard Processes Manual* are to be completed through the Reliability Standards development process and are subject to approval by the Applicable Governmental Authorities in the U.S. and Canada.~~

310. Annual Reliability Standards Development Plan

NERC shall develop and provide an annual Reliability Standards Development Plan for development of Reliability Standards to the Applicable Governmental Authorities. NERC shall consider the comments and priorities of the Applicable Governmental Authorities in developing and updating the annual Reliability Standards Development Plan. Each annual Reliability Standards Development Plan shall include a progress report comparing results achieved to the prior year's Reliability Standards Development Plan.

311. Regional Entity Standards Development Procedures

- 1. NERC Approval of Regional Entity Reliability Standards Development Procedure** — To enable a Regional Entity to develop Regional Reliability Standards that are to be recognized and made part of NERC Reliability Standards, a Regional Entity may request NERC to approve a Regional Reliability Standards development procedure.
- 2. Public Notice and Comment on Regional Reliability Standards Development Procedure** — Upon receipt of such a request, NERC shall publicly notice and request comment on the proposed Regional Reliability Standards development procedure, allowing a minimum of 45 days for comment. The Regional Entity shall have an opportunity to resolve any objections identified in the comments and may choose to withdraw the request, revise the Regional Reliability Standards

development procedure and request another posting for comment, or submit the Regional Reliability Standards development procedure, along with its consideration of any objections received, for approval by NERC.

3. **Evaluation of Regional Reliability Standards Development Procedure** — NERC shall evaluate whether a Regional Reliability Standards development procedure meets the criteria listed below and shall consider stakeholder comments, any unresolved stakeholder objections, and the consideration of comments provided by the Regional Entity, in making that determination. If NERC determines the Regional Reliability Standards development procedure meets these requirements, the Regional Reliability Standards development procedure shall be submitted to the Board for approval. The Board shall consider the recommended action, stakeholder comments, any unresolved stakeholder comments, and the Regional Entity consideration of comments in determining whether to approve the Regional Reliability Standards development procedure.

3.1 **Evaluation Criteria** — The Regional Reliability Standards development procedure shall be:

3.1.1 **Open** — The Regional Reliability Standards development procedure shall provide that any person or entity who is directly and materially affected by the reliability of the Bulk Power Systems within the Regional Entity shall be able to participate in the development and approval of Reliability Standards. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in the Regional Entity, a Regional Entity or any organization, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements.

3.1.2 **Inclusive** — The Regional Reliability Standards development procedure shall provide that any Person with a direct and material interest has a right to participate by expressing an opinion and its basis, having that position considered, and appealing through an established appeals process if adversely affected.

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

3.1.4 **Due Process** — The Regional Reliability Standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the Regional Reliability Standards development procedure shall include public notice of the intent to develop a Regional Reliability Standard, a public

comment period on the proposed Regional Reliability Standard, due consideration of those public comments, and a ballot of interested stakeholders.

3.1.5 **Transparent** — All actions material to the development of Regional Reliability Standards shall be transparent. All Regional Reliability Standards development meetings shall be open and publicly noticed on the Regional Entity's website.

3.1.6 **Accreditation of Regional Standards Development Procedure** — A Regional Entity's Regional Reliability Standards development procedure that is accredited by the American National Standards Institute ~~or the Standards Council of Canada~~ shall be deemed to meet the criteria listed in this Section 311.3.1, although such accreditation is not a prerequisite for approval by NERC.

3.1.7 **Use of NERC Procedure** — A Regional Entity may adopt the NERC *Standard Processes Manual* as the Regional Reliability Standards development procedure, in which case the Regional Entity's Regional Reliability Standards development procedure shall be deemed to meet the criteria listed in this Section 311.3.1.

4. **Revisions of Regional Reliability Standards Development Procedures** — Any revision to a Regional Reliability Standards development procedure shall be subject to the same approval requirements set forth in Sections 311.1 through 311.3.
5. **Duration of Regional Reliability Standards Development Procedures** — The Regional Reliability Standards development procedure shall remain in effect until such time as it is replaced with a new version approved by NERC or it is withdrawn by the Regional Entity. The Regional Entity may, at its discretion, withdraw its Regional Reliability Standards development procedure at any time.

312. Regional Reliability Standards

1. **Basis for Regional Reliability Standards** — Regional Entities may propose Regional Reliability Standards that set more stringent reliability requirements than the NERC Reliability Standard or cover matters not covered by an existing NERC Reliability Standard. Such Regional Reliability Standards shall in all cases be ~~submitted to~~ ~~approved by~~ NERC ~~for adoption~~ and, ~~if adopted~~, made part of the NERC Reliability Standards and shall be enforceable in accordance with the delegation agreement between NERC and the Regional Entity or other instrument granting authority over enforcement to the Regional Entity. No entities other than NERC and the Regional Entity shall be permitted to develop Regional Reliability

Standards that are enforceable under statutory authority delegated to NERC and the Regional Entity.

2. **Regional Reliability Standards That are Directed by a NERC Reliability Standard** — Although it is the intent of NERC to promote uniform Reliability Standards across North America, in some cases it may not be feasible to achieve a reliability objective with a Reliability Standard that is uniformly applicable across North America. In such cases, NERC may direct Regional Entities to develop Regional Reliability Standards necessary to implement a NERC Reliability Standard. Such Regional Reliability Standards that are developed pursuant to a direction by NERC shall be made part of the NERC Reliability Standards.
3. **Procedure for Developing an Interconnection-wide Regional Standard** — A Regional Entity organized on an Interconnection-wide basis may propose a Regional Reliability Standard for approval as a NERC Reliability Standard to be made mandatory for all applicable Bulk Power System owners, operators, and users within that Interconnection.
 - 3.1 **Presumption of Validity** — An Interconnection-wide Regional Reliability Standard that is determined by NERC to be just, reasonable, and not unduly discriminatory or preferential, and in the public interest, and consistent with such other applicable standards of governmental authorities, shall be adopted as a NERC Reliability Standard. NERC shall rebuttably presume that a Regional Reliability Standard developed, in accordance with a Regional Reliability Standards development process approved by NERC, by a Regional Entity organized on an Interconnection-wide basis, is just, reasonable, and not unduly discriminatory or preferential, and in the public interest, and consistent with such other applicable standards of governmental authorities.
 - 3.2 **Notice and Comment Procedure for Interconnection-wide Regional Reliability Standard** — NERC shall publicly notice and request comment on the proposed Interconnection-wide Regional Reliability Standard, allowing a minimum of 45 days for comment. NERC may publicly notice and post for comment the proposed Regional Reliability Standard concurrent with similar steps in the Regional Entity's Regional Reliability Standards development process. The Regional Entity shall have an opportunity to resolve any objections identified in the comments and may choose to comment on or withdraw the request, revise the proposed Regional Reliability Standard and request another posting for comment, or submit the proposed Regional Reliability Standard along with its consideration of any objections received, for approval by NERC.
 - 3.3 **Approval/Adoption of Interconnection-wide Regional Reliability Standard by NERC** — NERC shall evaluate and recommend whether a proposed Interconnection-wide Regional Reliability Standard has been

developed in accordance with all applicable procedural requirements and whether the Regional Entity has considered and resolved stakeholder objections that could serve as a basis for rebutting the presumption of validity of the Regional Reliability Standard. The Regional Entity, having been notified of the results of the evaluation and recommendation concerning [the NERC](#) proposed Regional Reliability Standard, shall have the option of presenting the proposed Regional Reliability Standard to the Board for [approval/adoption](#) as a NERC Reliability Standard. The Board shall consider the Regional Entity's request, NERC's recommendation for action on the Regional Reliability Standard, any unresolved stakeholder comments, and the Regional Entity's consideration of comments, in determining whether to [approve/adopt](#) the Regional Reliability Standard as a NERC Reliability Standard.

3.4 **Applicable Governmental Authority Approval** — An Interconnection-wide Regional Reliability Standard that has been [approved/adopted](#) by the Board shall be filed with the Applicable Governmental Authorities for approval, where authorized by applicable legislation or agreement, and shall become effective when approved by such Applicable Governmental Authorities or on a date set by the Applicable Governmental Authorities.

3.5 **Enforcement of Interconnection-wide Regional Reliability Standard** — An Interconnection-wide Regional Reliability Standard that has been [adopted/approved](#) by the Board and by the Applicable Governmental Authorities or is otherwise made effective within Canada as mandatory within a particular Region shall be applicable and enforced as a NERC Reliability Standard within the Region.

4. **Procedure for Developing Non-Interconnection-Wide Regional Reliability Standards** — Regional Entities that are not organized on an Interconnection-wide basis may propose Regional Reliability Standards to apply within their respective Regions. Such Regional Reliability Standards may be developed through the NERC Reliability Standards development procedure, or alternatively, through a Regional Reliability Standards development procedure that has been approved by NERC.

4.1 **No Presumption of Validity** — Regional Reliability Standards that are not proposed to be applied on an Interconnection-wide basis are not presumed to be valid but may be demonstrated by the proponent to be valid.

4.2 **Notice and Comment Procedure for Non-Interconnection-wide Regional Reliability Standards** — NERC shall publicly notice and request comment on the proposed Regional Reliability Standard, allowing a minimum of 45 days for comment. NERC may publicly notice and post for comment the proposed Regional Reliability Standard concurrent with

similar steps in the Regional Entity's Regional Reliability Standards development process. The Regional Entity shall have an opportunity to comment on or resolve any objections identified in the comments and may choose to withdraw the request, revise the proposed Regional Reliability Standard and request another posting for comment, or submit the proposed Regional Reliability Standard along with its consideration of any objections received, for [approval/adoption](#) by NERC.

4.3 **NERC [Approval/Adoption](#) of Non-Interconnection-wide Regional Reliability Standards** — NERC shall evaluate and recommend whether a proposed non-Interconnection-wide Regional Reliability Standard has been developed in accordance with all applicable procedural requirements and whether the Regional Entity has considered and resolved stakeholder objections. The Regional Entity, having been notified of the results of the evaluation and recommendation concerning proposed Regional Reliability Standard, shall have the option of presenting the proposed Regional Reliability Standard to the Board for [approval/adoption](#) as a NERC Reliability Standard. The Board shall consider the Regional Entity's request, the recommendation for action on the Regional Reliability Standard, any unresolved stakeholder comments, and the Regional Entity's consideration of comments, in determining whether to [approve/adopt](#) the Regional Reliability Standard as a NERC Reliability Standard.

4.4 **Applicable Governmental Authority Approval** — A non-Interconnection-wide Regional Reliability Standard that has been [approved/adopted](#) by the Board shall be filed with the Applicable Governmental Authorities for approval, where authorized by applicable legislation or agreement, and shall become effective when approved by such Applicable Governmental Authorities or on a date set by the Applicable Governmental Authorities.

4.5 **Enforcement of Non-Interconnection-wide Regional Reliability Standards** — A non-Interconnection-wide Regional Reliability Standard that has been [approved/adopted](#) by the Board and by the Applicable Governmental Authorities or is otherwise made effective within Canada as mandatory within a particular Region shall be applicable and enforced as a NERC Reliability Standard within the Region.

5. **Appeals** — A Regional Entity shall have the right to appeal NERC's decision not to [approve/adopt](#) a proposed Regional Reliability Standard or Variance to the Commission or other Applicable Governmental Authority.

313. Other Regional Criteria, Guides, Procedures, Agreements, Etc.

1. **Regional Criteria** — Regional Entities may develop Regional Criteria that are necessary to implement, to augment, or to comply with [NERC Reliability Standards](#), but which are not Reliability Standards. Regional Criteria may also address issues not within the scope of Reliability Standards, such as resource adequacy. Regional Criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents used to enhance the reliability of the Bulk Power System in the Region. These documents typically provide benefits by promoting more consistent implementation of the NERC Reliability Standards within the Region. These documents are not NERC Reliability Standards, Regional Reliability Standards, or regional Variances, and therefore are not enforceable under authority delegated by NERC pursuant to delegation agreements and do not require NERC approval.
2. **Catalog of Regional Criteria** — NERC shall maintain a current catalog of Regional Criteria. Regional Entities shall provide a catalog listing of Regional Criteria to NERC and shall notify NERC of changes to the listing. Regional Entities shall provide any listed document to NERC upon written request.

314. Conflicts with Statutes, Regulations, and Orders

Notice of Potential Conflict — If a Bulk Power System owner, operator, or user determines that a NERC or Regional Reliability Standard may conflict with a function, rule, order, tariff, rate schedule, legislative requirement or agreement that has been accepted, approved, or ordered by a governmental authority affecting that entity, the entity shall expeditiously notify the governmental authority, NERC, and the relevant Regional Entity of the conflict.

1. **Determination of Conflict** — NERC, upon request of the governmental authority, may advise the governmental authority regarding the conflict and propose a resolution of the conflict, including revision of the Reliability Standard if appropriate.
2. **Regulatory Precedence** — Unless otherwise ordered by a governmental authority, the affected Bulk Power System owner, operator, or user shall continue to follow the function, rule, order, tariff, rate schedule, legislative requirement, or agreement accepted, approved, or ordered by the governmental authority until the governmental authority finds that a conflict exists and orders a remedy and such remedy is affected.

315. Revisions to NERC [Reliability Standards Processes Manual](#)~~Development Procedure~~

Any person or entity may submit a written request to modify NERC *Standard Processes Manual*. Consideration of the request and development of the revision shall follow the process defined in the NERC *Standard Processes Manual*. Upon approval by the Board,

the revision shall be submitted to the Applicable Governmental Authorities for approval. Changes shall become effective only upon approval by the Applicable Governmental Authorities or on a date designated by the Applicable Governmental Authorities or as otherwise applicable in a particular jurisdiction.

316. Accreditation

NERC shall seek ~~and maintain~~continuing accreditation of the NERC Reliability Standards development process by the American National Standards Institute ~~and the Standards Council of Canada~~.

317. Five-Year Review of Reliability Standards

NERC shall complete a review of each NERC 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 review process shall be conducted in accordance with the NERC *Standard Processes Manual*. The standards process manager shall be responsible for administration of the five-year review of Reliability Standards. As a result of this review, the NERC Reliability Standard shall be reaffirmed, revised, or withdrawn. If the review indicates a need to revise or withdraw the Reliability Standard, a request for revision or withdrawal shall be prepared, submitted and addressed in accordance with the NERC *Standard Processes Manual*.

318. Coordination with the North American Energy Standards Board

NERC shall, ~~through a memorandum of understanding~~, maintain a close working relationship with the North American Energy Standards Board and ISO/RTO Council to ensure effective coordination of wholesale electric business practice standards and market protocols with the NERC Reliability Standards.

319. Archived Standards Information

NERC shall maintain a historical record of Reliability Standards information that is no longer maintained on-line. For example, Reliability Standards that have been retired~~expired or were replaced~~ may be removed from the on-line system. Archived information shall be retained indefinitely as practical, but in no case less than five~~six~~ years or one complete Reliability Standards review cycle from the date on which the Reliability Standard was no longer in effect. Archived records of Reliability Standards information shall be available electronically within 30 days following the receipt by the NERC standards ~~information~~process manager of a written request.

320. ~~Alternate Method~~Procedure for Developing and Approving~~Adopting~~ Violation Risk Factors and Violation Severity Levels

1. **Development of Violation Risk Factors and Violation Severity Levels** — NERC shall follow the process for developing Violation Risk Factors (VRFs) and Violation Severity Levels (VSLs) as set forth in the *Standard Processes Manual*, **Appendix 3A** to these Rules of Procedure.
2. **Remands of Directed Revision of VRFs and VSLs by Applicable Governmental Authorities** — If an Applicable Governmental Authority remands or directs a revision to a Board-approved VRF or VSL assignment, the NERC director of standards, after consulting with the standard drafting team, Standards Committee, and the NERC director of compliance operations, will recommend to the Board one of the following actions: (1) filing a request for clarification; (2) filing for rehearing or for review of the Applicable Governmental Authority decision; or (3) approval of the directed revisions to the VRF or VSL. If and to the extent time is available prior to the deadline for the Board’s decision, an opportunity for interested parties to comment on the action taken will be provided.
3. **Alternative Procedure for Developing and Approving Violation Risk Factors and Violation Severity Levels** — In the event the Reliability Standards development process fails to produce Violation Risk Factors or Violation Severity Levels for a particular Reliability Standard in a timely manner, the Board of Trustees may ~~approve~~^{adopt} Violation Risk Factors or Violation Severity Levels for that Reliability Standard after notice and opportunity for comment. In approving VRFs and VSLs, the Board shall consider the inputs of the Member Representatives Committee, affected stakeholders and NERC staff using the procedures set out in Section 1400 of these Rules of Procedure.

321. Special Rule to Address Certain Regulatory Directives

In circumstances where this Rule 321 applies, the Board of Trustees shall have the authority to take one or more of the actions set out below. The Board of Trustees shall have the authority to choose which one or more of the actions are appropriate to the circumstances and need not take these actions in sequential steps.

1. The Standards Committee shall have the responsibility to ensure that standards drafting teams address specific matters that are identified in directives issued by Applicable Governmental Authorities. If the Board of Trustees is presented with a proposed Reliability Standard that fails to address such directives, the Board of Trustees has the authority to remand, with instructions (including establishing a timetable for action), the proposed Reliability Standard to the Standards Committee.
2. Upon a written finding by the Board of Trustees that a ballot pool has failed to approve a proposed Reliability Standard that contains a provision to address a specific matter identified in a directive issued by an Applicable Governmental Authority, the Board of Trustees has the authority to remand the proposed

Reliability Standard to the Standards Committee, with instructions to (i) convene a public technical conference to discuss the issues surrounding the regulatory directive, including whether or not the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, in the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified; (ii) working with NERC staff, prepare a memorandum discussing the issues, an analysis of the alternatives considered and other appropriate matters; and (iii) re-ballot the proposed Reliability Standard one additional time, with such adjustments in the schedule as are necessary to meet the deadline contained in paragraph 2.1 of this Rule.

- 2.1 Such a re-ballot shall be completed within forty-five (45) days of the remand. The Standards Committee memorandum shall be included in the materials made available to the ballot pool in connection with the re-ballot.
- 2.2 In any such re-ballot, negative votes without comments related to the proposal shall be counted for purposes of establishing a quorum, but only affirmative votes and negative votes with comments related to the proposal shall be counted for purposes of determining the number of votes cast and whether the proposed Reliability Standard has been approved.
3. If the re-balloted proposed Reliability Standard achieves at least an affirmative two-thirds majority vote of the weighted Segment votes cast, with a quorum established, then the proposed Reliability Standard shall be deemed approved by the ballot pool and shall be considered by the Board of Trustees for approval.
4. If the re-balloted proposed Reliability Standard fails to achieve at least an affirmative two-thirds majority vote of the weighted Segment votes cast, but does achieve at least a sixty percent affirmative majority of the weighted Segment votes cast, with a quorum established, then the Board of Trustees has the authority to consider the proposed Reliability Standard for approval under the following procedures:
 - 4.1 The Board of Trustees shall issue notice of its intent to consider the proposed Reliability Standard and shall solicit written public comment particularly focused on the technical aspects of the provisions of the proposed Reliability Standard that address the specific matter identified in the regulatory directive, including whether or not the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, in the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified.
 - 4.2 The Board of Trustees may, in its discretion, convene a public technical conference to receive additional input on the matter.
 - 4.3 After considering the developmental record, the comments received during balloting and the additional input received under paragraphs 4.1

and 4.2 of this Rule, the Board of Trustees has authority to act on the proposed Reliability Standard.

4.3.1 If the Board of Trustees finds that the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest, considering (among other things) whether it is helpful to reliability, practical, technically sound, technically feasible, and cost-justified, then it has authority to approve the proposed Reliability Standard and direct that it be filed with Applicable Governmental Authorities with a request that it be made effective.

4.3.2 If the Board of Trustees is unable to find that the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest, considering (among other things) whether it is helpful to reliability, practical, technically sound, technically feasible, and cost-justified, then it has authority to treat the proposed Reliability Standard as a draft Reliability Standard and direct that the draft Reliability Standard and complete developmental record, including the additional input received under paragraphs 4.1 and 4.2 of this Rule, be filed with the Applicable Governmental Authorities as a compliance filing in response to the order giving rise to the regulatory directive, along with a recommendation that the Reliability Standard not be made effective and an explanation of the basis for the recommendation.

5. Upon a written finding by the Board of Trustees that standard drafting team has failed to develop, or a ballot pool has failed to approve, a proposed Reliability Standard that contains a provision to address a specific matter identified in a directive issued by an Applicable Governmental Authority, the Board of Trustees has the authority to direct the Standards Committee (with the assistance of stakeholders and NERC staff) to prepare a draft Reliability Standard that addresses the regulatory directive, taking account of the entire developmental record pertaining to the matter. If the Standards Committee fails to prepare such draft Reliability Standard, the Board of Trustees may direct NERC management to prepare such draft Reliability Standard.

5.1 The Board of Trustees may, in its discretion, convene a public technical conference to receive input on the matter. The draft Reliability Standard shall be posted for a 45-day public comment period.

5.2 If, after considering the entire developmental record (including the comments received under paragraph 5.1 of this Rule), the Board of Trustees finds that the draft Reliability Standard, with such modifications as the Board of Trustees determines are appropriate in light of the comments received, is just, reasonable, not unduly discriminatory or preferential, and in the public interest, considering (among other things)

whether it is practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the Bulk Power System, then the Board of Trustees has the authority to approve the draft Reliability Standard and direct that the proposed Reliability Standard be filed with Applicable Governmental Authorities with a request that the proposed Reliability Standard be made effective.

- 5.3 If, after considering the entire developmental record (including the comments received under paragraph 5.1 of this Rule), the Board of Trustees is unable to find that the draft Reliability Standard, even with modifications, is just, reasonable, not unduly discriminatory or preferential, and in the public interest, considering (among other things) whether it is practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the Bulk Power System, then the Board of Trustees has the authority to direct that the draft Reliability Standard and complete developmental record be filed as a compliance filing in response to the regulatory directive with the Applicable Governmental Authority issuing the regulatory directive, with a recommendation that the draft Reliability Standard not be made effective.
 - 5.4 The filing of the Reliability Standard under either paragraph 5.2 or paragraph 5.3 of this Rule shall include an explanation of the basis for the decision by the Board of Trustees.
 - 5.5 A Reliability Standard approved under paragraph 5 of this Rule shall not be eligible for submission as an American National Standard.
6. NERC shall on or before March 31st of each year file a report with Applicable Governmental Authorities on the status and timetable for addressing each outstanding directive to address a specific matter received from an Applicable Governmental Authority.

SECTION 400 — COMPLIANCE ENFORCEMENT

401. Scope of the NERC Compliance Monitoring and Enforcement Program

1. **Components of the NERC Compliance Monitoring and Enforcement Program** — NERC shall develop and implement a NERC Compliance Monitoring and Enforcement Program to promote the reliability of the Bulk Power System by enforcing compliance with approved Reliability Standards in those regions of North American in which NERC and/or a Regional Entity (pursuant to a delegation agreement with NERC that has been approved by the Applicable Governmental Authority) has been given enforcement authority. There are four distinct parts of the NERC Compliance Monitoring and Enforcement Program: (1) NERC’s oversight of the Regional Entity Compliance Monitoring and Enforcement Programs (Section 402), (2) the definition of the required Regional Entity Compliance Monitoring and Enforcement Program attributes (Section 403), (3) NERC’s monitoring of Regional Entity compliance with Reliability Standards (Section 404), and (4) the monitoring of compliance with Reliability Standards that are applicable to NERC (Sections 405–406).
2. **Who Must Comply** — Where required by applicable legislation, regulation, rule or agreement, all Bulk Power System owners, operators, and users, Regional Entities, and NERC, are required to comply with all approved NERC Reliability Standards at all times. Regional Reliability Standards and Variances approved by NERC and the Applicable Governmental Authority shall be considered NERC Reliability Standards and shall apply to all Bulk Power System owners, operators, or users responsible for meeting those Reliability Standards within the Regional Entity boundaries, whether or not the Bulk Power System owner, operator, or user is a member of the Regional Entity.
3. **Data Access** — All Bulk Power System owners, operators, and users shall provide to NERC and the applicable Regional Entity such information as is necessary to monitor compliance with the Reliability Standards. NERC and the applicable Regional Entity will define the data retention and reporting requirements in the Reliability Standards and compliance reporting procedures.
4. **Role of Regional Entities in the Compliance Monitoring and Enforcement Program** — Each Regional Entity that has been delegated authority through a delegation agreement or other legal instrument approved by the Applicable Governmental Authority shall, in accordance with the terms of the approved delegation agreement, administer a Regional Entity Compliance Monitoring and Enforcement program to meet the NERC Compliance Monitoring and Enforcement Program goals and the requirements in this Section 400.
5. **Program Continuity** — NERC will ensure continuity of compliance monitoring and enforcement within the geographic boundaries of a Regional Entity in the event that NERC does not have a delegation agreement, or the Regional Entity withdraws from the agreement or does not operate its Compliance Monitoring and Enforcement Program in accordance with the delegation agreement or other applicable requirements.

- 5.1 Should NERC not have a delegation agreement with a Regional Entity covering a geographic area, or a Regional Entity withdraws from an existing delegation agreement or the delegation agreement is otherwise terminated, NERC will directly administer the Compliance Monitoring and Enforcement Program applicable to owners, operators and users of the Bulk Power System within that geographic area.
 1. This monitoring and enforcement will be accomplished by NERC and Compliance Staff from another approved Regional Entity.
 2. If an existing delegation agreement with a Regional Entity is terminating, the Regional Entity shall promptly provide to NERC all relevant compliance information regarding Registered Entities, contacts, prior compliance information and actions, Mitigation Plans, and ~~R~~Remedial ~~a~~Action Directives for the period in which the Regional Entity was responsible for administering the Compliance Monitoring and Enforcement Program.
 3. NERC will levy and collect all Penalties directly and will utilize any Penalty monies collected to offset the expenses of administering the Compliance Monitoring and Enforcement Program for the geographic area.
- 5.2 Should a Regional Entity seek to withdraw from its delegation agreement, NERC will seek agreement from another Regional Entity to amend its delegation agreement with NERC to extend that Regional Entity's boundaries for compliance monitoring and enforcement. In the event no Regional Entity is willing to accept this responsibility, NERC will administer the Compliance Monitoring and Enforcement Program within the geographical boundaries of the Regional Entity seeking to withdraw from the delegation agreement, in accordance with Section 401.5.1.
6. **Actively Monitored Requirements** — NERC, with input from the Regional entities, stakeholders, and regulators, shall annually select a subset of the NERC Reliability Standards and Requirements to be actively monitored and audited in the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan. Compliance is required, and NERC and the Regional Entities have authority to monitor compliance, 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.
7. **Penalties, Sanctions, and Remedial Action Directives** — NERC and Regional Entities will apply Penalties, sanctions, and ~~R~~Remedial ~~a~~Action Directives that bear a reasonable relation to the seriousness of a violation and take into consideration timely remedial efforts as defined in the NERC *Sanction Guidelines*, which is incorporated into these rules as **Appendix 4B**.
8. **Multiple Enforcement Actions** – A Registered Entity shall not be subject to an enforcement action by NERC and a Regional Entity, 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.

9. **Records** — NERC shall maintain a record of each compliance submission, including Self-Reported, Possible, Alleged, and Confirmed Violations of approved Reliability Standards; associated Penalties, sanctions, Remedial Action Directives and settlements; and the status of mitigation actions.

10. **Confidential Information** — NERC will treat all Possible and Alleged Violations of Reliability Standards and matters related to a Compliance Monitoring and Enforcement Program process, including the status of any Compliance Investigation or other Compliance Monitoring and Enforcement Program process, as confidential in accordance with Section 1500.

The types of information that will be considered confidential and will not (subject to statutory and regulatory requirements) be disclosed in any public information reported by NERC are identified in Section 1500. Information that would jeopardize Bulk Power System reliability, including information relating to a Cyber Security Incident, will be identified and protected from public disclosure as Critical Energy Infrastructure Information in accordance with Section 1500.

The Regional Entity and NERC shall give Bulk Power System owners, operators, and users a reasonable opportunity to demonstrate that information concerning a violation is confidential before such report is disclosed to the public.

11. **Public Posting** — When the affected Bulk Power System owner, operator, or user either agrees with a Possible or Alleged Violation(s) of a Reliability Standard(s) or a report of a Compliance Audit or Compliance Investigation, or enters into a settlement agreement concerning a Possible or Alleged Violation(s), or the time for submitting an appeal is passed, or all appeals processes are complete, NERC shall, subject to the confidentiality requirements of these Rules of Procedure, publicly post each Confirmed Violation, Penalty or sanction, settlement agreement, and final Compliance Audit or Compliance Investigation report, on its website.

11.1 Each Bulk Power System owner, operator, or user may provide NERC with a statement to accompany the Confirmed Violation or report to be posted publicly. The statement must be on company letterhead and include a signature, as well as the name and title of the person submitting the information.

11.2 In accordance with Section 1500, information deemed by a Bulk Power System owner, operator, or user, Regional Entity, or NERC as Critical Energy Infrastructure Information (*NERC Security Guidelines for the Electricity Sector — Protecting Potentially Sensitive Information* may be used as a guide) or other Confidential Information shall be redacted in accordance with Section 1500 and not be released publicly.

11.3 Subject to redaction of Critical Energy Infrastructure Information or other Confidential Information, for each Confirmed Violation or settlement relating to a Possible Violation or an Alleged Violation, the public posting shall include the name of any relevant entity, the nature, time period, and circumstances of such Possible, Alleged or Confirmed Violation, any Mitigation Plan [or other Mitigating Activities](#) to be implemented by the Registered Entity in connection with the Confirmed Violation or settlement, and sufficient facts to assist owners, operators and users of the Bulk Power System to evaluate whether they have engaged in or are engaging in similar activities.

12. **Violation Information Review** — NERC Compliance Staff shall periodically review and analyze all reports of Possible, Alleged and Confirmed Violations to identify trends and other pertinent reliability issues.

402. NERC Oversight of the Regional Entity Compliance Monitoring and Enforcement Programs

1. **NERC Monitoring Program** — NERC shall have a program to monitor the Compliance Monitoring and Enforcement Program of each Regional Entity that has been delegated authority. The objective of this monitoring program shall be to ensure that the Regional Entity carries out its Compliance Monitoring and Enforcement Program in accordance with these Rules of Procedure and the terms of the delegation agreement, and to ensure consistency and fairness of the Regional Entity's Compliance Monitoring and Enforcement Program. Oversight and monitoring by NERC shall be accomplished through an annual Compliance Monitoring and Enforcement Program review, program audits, and regular evaluations of Regional Entity Compliance Monitoring and Enforcement Program performance as described below.

1.1 **NERC Review of Annual Regional Entity Compliance Monitoring and Enforcement Program Implementation Plans** — NERC shall require each Regional Entity to submit for review and approval an annual Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan. NERC shall review each annual Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan and shall accept the plan if it meets NERC requirements and the requirements of the delegation agreement.

1.2 **Regional Entity Compliance Monitoring and Enforcement Program Evaluation** — NERC shall annually evaluate the goals, tools, and procedures of each Regional Entity Compliance Monitoring and Enforcement Program to determine the effectiveness of each Regional Entity Compliance Monitoring and Enforcement Program, using criteria developed by the NERC Compliance and Certification Committee.

1.3 **Regional Entity Compliance Monitoring and Enforcement Program Audit** — At least once every five years, NERC shall conduct an audit to evaluate how each Regional Entity Compliance Monitoring and

Enforcement Program implements the NERC Compliance Monitoring and Enforcement Program. The evaluation shall be based on these Rules of Procedure, including Appendix 4C, the delegation agreement, directives in effect pursuant to the delegation agreement, approved annual Regional Entity Compliance Monitoring and Enforcement Program Implementation Plans, required Compliance Monitoring and Enforcement Program attributes, and the NERC Compliance Monitoring and Enforcement Program procedures. These evaluations shall be provided to the Applicable Governmental Authorities to demonstrate the effectiveness of each Regional Entity. In addition, audits of Cross-Border Regional Entities shall cover applicable requirements imposed on the Regional Entity by statute, regulation, or order of, or agreement with, provincial governmental and/or regulatory authorities for which NERC has auditing responsibilities over the Regional Entity's compliance with such requirements within Canada or Mexico. Participation of a representative of an Applicable Governmental Authority shall be subject to the limitations of sections 3.1.6 and 8.0 of Appendix 4C of these Rules of Procedure regarding disclosures of non-public compliance information related to other jurisdictions. NERC shall maintain an audit procedure containing the requirements, steps, and timelines to conduct an audit of each Regional Entity Compliance Monitoring and Enforcement Program. The current procedure is contained in the NERC Audit of Regional Entity Compliance Programs, which is incorporated into these rules as **Appendix 4A**.

1.3.1. NERC shall establish a program to audit bulk power system owners, operators, and users operating within a regional entity to verify the findings of previous compliance audits conducted by the regional entity to evaluate how well the regional entity compliance enforcement program is meeting its delegated authority and responsibility.

1.4 Applicable Governmental Authorities will be allowed to participate as an observer in any audit conducted by NERC of a Regional Entity's Compliance Monitoring and Enforcement Program. A representative of the Regional Entity being audited will be allowed to participate in the audit as an observer.

2. **Consistency Among Regional Compliance Monitoring and Enforcement Programs** — To provide for a consistent Compliance Monitoring and Enforcement Program for all Bulk Power System owners, operators, and users required to comply with approved Reliability Standards, NERC shall maintain a single, uniform Compliance Monitoring and Enforcement Program, which is incorporated into these rules of procedure as **Appendix 4C**. Any differences in Regional Entity Compliance Monitoring and Enforcement Program methods, including determination of violations and Penalty assessment, shall be justified on a case-by-case basis and fully documented in each Regional Entity delegation agreement.

- 2.1 NERC shall ensure that each of the Regional Entity Compliance Monitoring and Enforcement Programs meets these Rules of Procedure, including **Appendix 4C**, and follows the terms of the delegation agreement and the approved annual Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan.
- 2.2 NERC shall maintain a single, uniform Compliance Monitoring and Enforcement Program in **Appendix 4C** containing the procedures to ensure the consistency and fairness of the processes used to determine Regional Entity Compliance Monitoring and Enforcement Program findings of compliance and noncompliance, and the application of Penalties and sanctions.
- 2.3 NERC shall periodically conduct Regional Entity compliance manager forums. These forums shall use the results of Regional Entity Compliance Monitoring and Enforcement Program audits and findings of NERC Compliance Staff to identify and refine Regional Entity Compliance Monitoring and Enforcement Program differences into a set of best practices over time.
3. **Information Collection and Reporting** — NERC and the Regional Entities shall implement data management procedures that address data reporting requirements, data integrity, data retention, data security, and data confidentiality.
4. **Violation Disclosure** — NERC shall disclose all Confirmed Violations and maintain as confidential Possible Violations and Alleged Violations, according to the reporting and disclosure process in **Appendix 4C**.
5. **Authority to Determine Noncompliance, Levy Penalties and Sanctions, and Issue Remedial Action Directives** — NERC and Regional Entity Compliance Staff shall have the authority and responsibility to make initial determinations of compliance or noncompliance, and where authorized by the Applicable Governmental Authorities or where otherwise authorized, to determine Penalties and sanctions for noncompliance with a Reliability Standard, and issue Remedial Action Directives. Regional Entity boards or a compliance panel reporting directly to the Regional Entity board will be vested with the authority for the overall Regional Entity Compliance Monitoring and Enforcement Program and have the authority to impose Penalties and sanctions on behalf of NERC, where authorized by applicable legislation or agreement. Remedial Action Directives may be issued by NERC or a Regional Entity that is aware of a Bulk Power System owner, operator, or user that is or is about to engage in an act or practice that would result in noncompliance with a Reliability Standard, where such Remedial Action Directive is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat. If, after receiving such a Remedial Action Directive, the Bulk Power System owner, operator, or user does not take appropriate action to avert a violation of a Reliability Standard,

NERC may petition the Applicable Governmental Authority to issue a compliance order.

6. **Due Process** — NERC shall establish and maintain a fair, independent, and nondiscriminatory appeals process. The appeals process is set forth in Sections 408-410. The process shall allow Bulk Power System owners, operators, and users to appeal the Regional Entity's findings of noncompliance and to appeal Penalties, sanctions, and Remedial Action Directives that are levied by the Regional Entity. Appeals beyond the NERC process will be heard by the Applicable Governmental Authority.

The appeals process will also allow for appeals to NERC of any findings of noncompliance issued by NERC to a Regional Entity for Reliability Standards and Requirements where the Regional Entity is monitored for compliance to a Reliability Standard. No monetary Penalties will be levied in these matters; however sanctions, remedial actions, and directives to comply may be applied by NERC.

7. **Conflict Disclosure** — NERC shall disclose to the appropriate governmental authorities any potential conflicts between a market rule and the enforcement of a Regional Reliability Standard.
8. **Confidentiality** — To maintain the integrity of the NERC Compliance Monitoring and Enforcement Program, NERC and Regional Entity staff, Compliance Audit team members, and committee members shall maintain the confidentiality of information obtained and shared during compliance monitoring and enforcement processes including Compliance Investigations, Compliance Audits, Spot Checks, drafting of reports, appeals, and closed meetings.
 - 8.1 NERC and the Regional Entity shall have in place appropriate codes of conduct and confidentiality agreements for staff and other Compliance Monitoring and Enforcement Program participants.
 - 8.2 Individuals not bound by NERC or Regional Entity codes of conduct who serve on compliance-related committees or Compliance Audit teams shall sign a NERC confidentiality agreement prior to participating on the committee or Compliance Audit team.
 - 8.3 Information deemed by a Bulk Power System owner, operator, or user, Regional Entity, or NERC as Critical Energy Infrastructure Information shall not be distributed outside of a committee or team, nor released publicly. Other information subject to confidentiality is identified in Section 1500.
 - 8.4 In the event that a staff, committee, or Compliance Audit team member violates any of the confidentiality rules set forth above, the staff, committee, or Compliance Audit team member and any member organization with which the individual is associated may be subject to

appropriate action by the Regional Entity or NERC, including prohibiting participation in future Compliance Monitoring and Enforcement Program activities.

9. **Auditor Training** — NERC shall develop and provide training in auditing skills to all people who participate in NERC and Regional Entity Compliance Audits. Training for NERC and Regional Entity personnel and others who serve as Compliance Audit team leaders shall be more comprehensive than training given to industry subject matter experts and Regional Entity members. Training for Regional Entity members may be delegated to the Regional Entity.

403. Required Attributes of Regional Entity Compliance Monitoring and Enforcement Programs

Each Regional Entity Compliance Monitoring and Enforcement Program shall promote excellence in the enforcement of Reliability Standards. To accomplish this goal, each Regional Entity Compliance Monitoring and Enforcement Program shall (i) conform to and comply with the NERC uniform Compliance Monitoring and Enforcement Program, **Appendix 4C** to these Rules of Procedure, except to the extent of any deviations that are stated in the Regional Entity's delegation agreement, and (ii) meet all of the attributes set forth in this Section 403.

Program Structure

1. **Independence** — Each Regional Entity's governance of its Compliance Monitoring and Enforcement Program shall exhibit independence, meaning the Compliance Monitoring and Enforcement Program shall be organized so that its compliance monitoring and enforcement activities are carried out separately from other activities of the Regional Entity. The Compliance Monitoring and Enforcement Program shall not be unduly influenced by the Bulk Power System owners, operators, and users being monitored or other Regional Entity activities that are required to meet the Reliability Standards. Regional Entities must include rules providing that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.
2. **Exercising Authority** — Each Regional Entity Compliance Monitoring and Enforcement Program shall exercise the responsibility and authority in carrying out the delegated functions of the NERC Compliance Monitoring and Enforcement Program in accordance with delegation agreements and **Appendix 4C**. These functions include but are not limited to: data gathering, data reporting, Compliance Investigations, Compliance Audit activities, evaluating compliance and noncompliance, imposing Penalties and sanctions, and approving and tracking mitigation actions.
3. **Delegation of Authority** — To maintain independence, fairness, and consistency in the NERC Compliance Monitoring and Enforcement Program, a Regional Entity shall not sub-delegate its Compliance Monitoring and Enforcement Program duties to entities or persons other than the Regional Entity Compliance Staff, unless (i) required by statute or regulation in the applicable jurisdiction, or

(ii) by agreement with express approval of NERC and of FERC or other Applicable Governmental Authority, to another Regional Entity.

4. **Hearings of Contested Findings or Sanctions** — The Regional Entity board or compliance panel reporting directly to the Regional Entity board (with appropriate recusal procedures) will be vested with the authority for conducting compliance hearings in which any Bulk Power System owner, operator, or user provided a Notice of Alleged Violation may present facts and other information to contest a Notice of Alleged Violation or any proposed Penalty, sanction, any Remedial Action Directive, or any Mitigation Plan component. Compliance hearings shall be conducted in accordance with the Hearing Procedures set forth in Attachment 2 to **Appendix 4C**. If a stakeholder body serves as the Hearing Body, no two industry sectors may control any decision and no single segment may veto any matter related to compliance after recusals.

Program Resources

5. **Regional Entity Compliance Staff** — Each Regional Entity shall have sufficient resources to meet delegated compliance monitoring and enforcement responsibilities, including the necessary professional staff to manage and implement the Regional Entity Compliance Monitoring and Enforcement Program.
6. **Regional Entity Compliance Staff Independence** — The Regional Entity Compliance Staff shall be capable of and required to make all determinations of compliance and noncompliance and determine Penalties, sanctions, and [Remedial Action Directives and to review and accept Mitigation Plans and other Mitigating Activities](#).
 - 6.1 Regional Entity Compliance Staff shall not have a conflict of interest, real or perceived, in the outcome of compliance monitoring and enforcement processes, reports, or sanctions. The Regional Entity shall have in effect a conflict of interest policy.
 - 6.2 Regional Entity Compliance Staff shall have the authority and responsibility to carry out compliance monitoring and enforcement processes (with the input of industry subject matter experts), make determinations of compliance or noncompliance, and levy Penalties and sanctions without interference or undue influence from Regional Entity members and their representative or other industry entities.
 - 6.3 Regional Entity Compliance Staff may call upon independent technical subject matter experts who have no conflict of interest in the outcome of the compliance monitoring and enforcement process to provide technical advice or recommendations in the determination of compliance or noncompliance.
 - 6.4 Regional Entity Compliance Staff shall abide by the confidentiality requirements contained in Section 1500 and **Appendix 4C** of these Rules of Procedure, the NERC delegation agreement and other confidentiality

agreements required by the NERC Compliance Monitoring and Enforcement Program.

- 6.5 Contracting with independent consultants or others working for the Regional Entity Compliance Monitoring and Enforcement Program shall be permitted provided the individual has not received compensation from a Bulk Power System owner, operator, or user being monitored for a period of at least the preceding six months and owns no financial interest in any Bulk Power System owner, operator, or user being monitored for compliance to the Reliability Standard, regardless of where the Bulk Power System owner, operator, or user operates. Any such individuals for the purpose of these Rules of Procedure shall be considered as augmenting Regional Entity Compliance Staff.

7. Use of Industry Subject Matter Experts and Regional Entity Members — Industry experts and Regional Entity members may be called upon to provide their technical expertise in Compliance Monitoring and Enforcement Program activities.

- 7.1 The Regional Entity shall have procedures defining the allowable involvement of industry subject matter experts and Regional Entity members. The procedures shall address applicable antitrust laws and conflicts of interest.
- 7.2 Industry subject matter experts and Regional Entity members shall have no conflict of interest or financial interests in the outcome of their activities.
- 7.3 Regional Entity members and industry subject matter experts, as part of teams or Regional Entity committees, may provide input to the Regional Entity Compliance Staff so long as the authority and responsibility for (i) evaluating and determining compliance or noncompliance and (ii) levying Penalties, sanctions, or ~~R~~Remedial ~~A~~Action Directives shall not be delegated to any person or entity other than the Compliance Staff of the Regional Entity. Industry subject matter experts, Regional Entity members, or Regional Entity committees shall not make determinations of noncompliance or levy Penalties, sanctions, or ~~R~~Remedial ~~A~~Action Directive. Any committee involved shall be organized so that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.
- 7.4 Industry subject matter experts and Regional Entity members shall sign a confidentiality agreement appropriate for the activity being performed.
- 7.5 All industry subject matter experts and Regional Entity members participating in Compliance Audits and Compliance Investigations shall successfully complete auditor training provided by NERC or the Regional Entity prior to performing these activities

Program Design

8. **Regional Entity Compliance Monitoring and Enforcement Program Content** — All approved Reliability Standards shall be included in the Regional Entity Compliance Monitoring and Enforcement Program for all Bulk Power System owners, operators, and users within the defined boundaries of the Regional Entity. Compliance to approved Regional Reliability Standards is applicable only within the Region of the Regional Entity that submitted those particular Regional Reliability Standards for approval. NERC will identify the minimum set of Reliability Standards and Requirements to be actively monitored by the Regional Entity in a given year.
9. **Antitrust Provisions** — Each Regional Entity's Compliance Monitoring and Enforcement Program shall be structured and administered to abide by U.S. antitrust law and Canadian competition law.
10. **Information Submittal** — All Bulk Power System owners, operators, and users within the Regional Entity responsible for complying with Reliability Standards shall submit timely and accurate information when requested by the Regional Entity or NERC. NERC and the Regional Entities shall preserve any mark of confidentiality on information submitted pursuant to Section 1502.1.
 - 10.1 Each Regional Entity has the authority to collect the necessary information to determine compliance and shall develop processes for gathering data from the Bulk Power System owners, operators, and users the Regional Entity monitors.
 - 10.2 The Regional Entity or NERC has the authority to request information from Bulk Power System owners, operators, and users pursuant to Section 401.3 or this Section 403.10 without invoking a specific compliance monitoring and enforcement process in **Appendix 4C**, for purposes of determining whether to pursue one such process in a particular case and/or validating in the enforcement phase of a matter the conclusions reached through the compliance monitoring and enforcement process(es).
 - 10.3 When required or requested, the Regional Entities shall report information to NERC promptly and in accordance with **Appendix 4C** and other NERC procedures.
 - 10.4 Regional Entities shall notify NERC of all Possible, Alleged and Confirmed Violations of NERC Reliability Standards by Registered Entities over which the Regional Entity has compliance monitoring and enforcement authority, in accordance with **Appendix 4C**.
 - 10.5 A Bulk Power System owner, operator, or user found in noncompliance with a Reliability Standard shall submit a Mitigation Plan with a timeline addressing how the noncompliance will be corrected, [unless an enforcement process is used that does not require a Mitigation Plan](#). The

Regional Entity Compliance Staff shall review and ~~approve~~accept the Mitigation Plan in accordance with **Appendix 4C**.

10.6 An officer of a Bulk Power System owner, operator, or user shall certify as accurate all compliance data Self-Reported to the Regional Entity Compliance Monitoring and Enforcement Program.

10.7 Regional Entities shall develop and implement procedures to verify the compliance information submitted by Bulk Power System owners, operators, and users.

11. Compliance Audits of Bulk Power System Owners, Operators, and Users — Each Regional Entity will maintain and implement a program of proactive Compliance Audits of Bulk Power System owners, operators, and users responsible for complying with Reliability Standards, in accordance with **Appendix 4C**. A Compliance Audit is a process in which a detailed review of the activities of a Bulk Power System owner, operator, or user is performed to determine if that Bulk Power System owner, operator, or user is complying with approved Reliability Standards.

11.1 For an entity registered as a Balancing Authority, Reliability Coordinator, or Transmission Operator, the Compliance Audit will be performed at least once every three years. For other Bulk Power System owners, operators, and users on the NERC Compliance Registry, Compliance Audits shall be performed on a schedule established by NERC.

11.2 Compliance Audits of Balancing Authorities, Reliability Coordinators, and Transmission Operators will include a component at the audited entity's site. For other Bulk Power System owners, operators, and users on the NERC Compliance Registry, the Compliance Audit may be either an on-site Compliance Audit or based on review of documents, as determined to be necessary and appropriate by NERC or Regional Entity Compliance Staff.

11.3 Compliance Audits must include a detailed review of the activities of the Bulk Power System owner, operator, or user to determine if the Bulk Power System owner, operator, or user is complying with all approved Reliability Standards identified for audit by NERC. The Compliance Audit shall include a review of supporting documentation and evidence used by the Bulk Power System owner, operator or user to demonstrate compliance for an appropriate period prior to the Compliance Audit.

12. Confidentiality of Compliance Monitoring and Enforcement Processes — All compliance monitoring and enforcement processes, and information obtained from such processes, are to be non-public and treated as confidential in accordance with Section 1500 and **Appendix 4C** of these Rules of Procedure, unless NERC, the Regional Entity or FERC or another Applicable Governmental

Authority with jurisdiction determines a need to conduct a Compliance Monitoring and Enforcement Program process on a public basis, provided, that NERC and the Regional Entities shall publish (i) schedules of Compliance Audits scheduled in each year, (ii) a public report of each Compliance Audit, and (iii) Notices of Penalty and settlement agreements. Advance authorization from the Applicable Governmental Authority is required to make public any compliance monitoring and enforcement process or any information relating to a compliance monitoring and enforcement process, or to permit interventions when determining whether to impose a Penalty. This prohibition on making public any compliance monitoring and enforcement process does not prohibit NERC or a Regional Entity from publicly disclosing (i) the initiation of or results from an analysis of a significant system event under Section 807 or of off-normal events or system performance under Section 808, or (ii) information of general applicability and usefulness to owners, operators, and users of the Bulk Power System concerning reliability and compliance matters, so long as specific allegations or conclusions regarding Possible or Alleged Violations of Reliability Standards are not included in such disclosures.

13. **Critical Energy Infrastructure Information** — Information that would jeopardize Bulk Power System reliability, including information relating to a Cyber Security Incident will be identified and protected from public disclosure as Critical Energy Infrastructure Information. In accordance with Section 1500, information deemed by a Bulk Power System owner, operator, or user, Regional Entity, or NERC as Critical Energy Infrastructure Information shall be redacted according to NERC procedures and shall not be released publicly.
14. **Penalties, Sanctions, and Remedial Action Directives** — Each Regional Entity will apply all Penalties, sanctions, and Remedial Action Directives in accordance with the approved *Sanction Guidelines*, **Appendix 4B** to these Rules of Procedure. Any changes to the *Sanction Guidelines* to be used by any Regional Entity must be approved by NERC and submitted to the Applicable Governmental Authority for approval. All Confirmed Violations, Penalties, and sanctions, [including Confirmed Violations, Penalties and sanctions specified in a Regional Entity Hearing Body decision](#), will be provided to NERC for review and filing with Applicable Governmental Authorities as a Notice of Penalty, in accordance with **Appendix 4C**.
15. **Regional Entity Hearing Process** — Each Regional Entity Compliance Monitoring and Enforcement Program shall establish and maintain a fair, independent, and nondiscriminatory process for hearing contested violations and any Penalties or sanctions levied, in conformance with Attachment 2 to **Appendix 4C** to these Rules of Procedure and any deviations therefrom that are set forth in the Regional Entity's delegation agreement. The hearing process shall allow Bulk Power System owners, operators, and users to contest findings of compliance violations, any Penalties and sanctions that are proposed to be levied, proposed Remedial Action Directives, and components of proposed Mitigation Plans. The Regional Entity hearing process shall be conducted before the Regional Entity

board or a balanced committee established by and reporting to the Regional Entity board as the final adjudicator [at the Regional Entity level](#), provided, that Canadian provincial regulators may act as the final adjudicator in their respective jurisdictions. The Regional Entity hearing process shall (i) include provisions for recusal of any members of the Hearing Body with a potential conflict of interest, real or perceived, from all compliance matters considered by the Hearing Body for which the potential conflict of interest exists and (ii) provide that no two industry sectors may control any decision and no single segment may veto any matter brought before the Hearing Body after recusals.

Each Regional Entity will notify NERC of all hearings and NERC may observe any of the proceedings. Each Regional Entity will notify NERC of the outcome of all hearings.

If a Bulk Power System owner, operator, or user [or a Regional Entity](#) has completed the Regional Entity hearing process and desires to appeal the outcome of the hearing, the Bulk Power System owner, operator, or user [or the Regional Entity](#) shall appeal to NERC in accordance with Section 409 of these Rules of Procedure, except that a determination of violation or Penalty that has been directly adjudicated by an Applicable Governmental Authority shall be appealed with that Applicable Governmental Authority.

16. **Annual Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan** — Each Regional Entity shall annually develop and submit to NERC for approval a Regional Entity Compliance Monitoring and Enforcement Implementation Plan in accordance with **Appendix 4C** that identifies the Reliability Standards and Requirements to be actively monitored (both those required by NERC and any additional Reliability Standards the Regional Entity proposes to monitor), and how each NERC and Regional Entity identified Reliability Standard will be monitored, evaluated, reported, sanctioned, and appealed. These Regional Implementation Plans will be submitted to NERC on the schedule established by NERC, generally on or about [NovemberOctober](#) 1 of the preceding year. In conjunction with the annual Regional Implementation Plan, each Regional Entity must report to NERC regarding how it carried out its delegated compliance monitoring and enforcement authority in the previous year, the effectiveness of the Compliance Monitoring and Enforcement Program, and changes expected to correct any deficiencies identified. Each Regional Entity will provide its annual report on the schedule established by NERC, generally on or about February 15 of the following year.

404. NERC Monitoring of Compliance for Regional Entities or Bulk Power Owners, Operator, or Users

NERC shall monitor Regional Entity compliance with NERC Reliability Standards and, if no there is no delegation agreement in effect with a Regional Entity for the geographic area, shall monitor Bulk Power System owners, operators, and users for compliance with NERC Reliability Standards. Industry subject matter experts may be used as appropriate in Compliance Investigations, Compliance Audits, and other Compliance Monitoring and

Enforcement Program activities, subject to confidentiality, antitrust, and conflict of interest provisions.

1. **NERC Obligations** — NERC Compliance Staff shall monitor the compliance of the Regional Entity with the Reliability Standards for which the Regional Entities are responsible, in accordance with **Appendix 4C**. NERC shall actively monitor in its annual Compliance Enforcement and Monitoring Program selected Reliability Standards that apply to the Regional Entities. NERC shall evaluate compliance and noncompliance with all of the Reliability Standards that apply to the Regional Entities and shall impose sanctions, Penalties, or Remedial Action Directives when there is a finding of noncompliance. NERC shall post all violations of Reliability Standards that apply to the Regional Entities as described in the reporting and disclosure process in **Appendix 4C**.

In addition, NERC will directly monitor Bulk Power System owners, operators, and users for compliance with NERC Reliability Standards in any geographic area for which there is not a delegation agreement in effect with a Regional Entity, in accordance with **Appendix 4C**. In such cases, NERC will serve as the Compliance Enforcement Authority described in **Appendix 4C**. Compliance matters contested by Bulk Power System owners, operators, and users in such an event will be heard by the NERC Compliance and Certification Committee.

2. **Compliance Audit of the Regional Entity** — NERC shall perform a Compliance Audit of each Regional Entity responsible for complying with Reliability Standards at least once every three years. NERC shall make an evaluation of compliance based on the information obtained through the Compliance Audit. After due process is complete, the final Compliance Audit report shall be made public in accordance with the reporting and disclosure process in **Appendix 4C**.
3. **Appeals Process** — Any Regional Entity or Bulk Power System owner, operator or user found by NERC, as opposed to a Regional Entity, to be in noncompliance with a Reliability Standard may appeal the findings of noncompliance with Reliability Standards and any sanctions or Remedial Action Directives that are issued by, or Mitigation Plan components imposed by, NERC, pursuant to the processes described in Sections 408 through 410.

405. Monitoring of Reliability Standards and Other Requirements Applicable to NERC

The NERC Compliance and Certification Committee shall establish and implement a process to monitor NERC's compliance with the Reliability Standards that apply to NERC. The process shall use independent monitors with no conflict of interest, real or perceived, in the outcomes of the process. All violations shall be made public according to the reporting and disclosure process in **Appendix 4C**. The Compliance and Certification Committee will also establish a procedure for monitoring NERC's compliance with its Rules of Procedure for the Standards Development, Compliance Monitoring and Enforcement, and Organization Registration and Certification Programs. Such procedures shall not be used to circumvent the appeals processes established for those programs.

406. Independent Audits of the NERC Compliance Monitoring and Enforcement Program

NERC shall provide for an independent audit of its Compliance Monitoring and Enforcement Program at least once every three years, or more frequently as determined by the Board. The audit shall be conducted by independent expert auditors as selected by the Board. The independent audit shall meet the following minimum requirements and any other requirements established by the NERC Board.

1. **Effectiveness** — The audit shall evaluate the success and effectiveness of the NERC Compliance Monitoring and Enforcement Program in achieving its mission.
2. **Relationship** — The audit shall evaluate the relationship between NERC and the Regional Entity Compliance Monitoring and Enforcement Programs and the effectiveness of the programs in ensuring reliability.
3. **Final Report Posting** — The final report shall be posted by NERC for public viewing in accordance with **Appendix 4C**.
4. **Response to Recommendations** — If the audit report includes recommendations to improve the NERC Compliance Monitoring and Enforcement Program, the administrators of the NERC Compliance Monitoring and Enforcement Program shall provide a written response and plan to the Board within 30 days of the release of the final audit report.

407. Penalties, Sanctions, and Remedial Action Directives

1. **NERC Review of Regional Entity Penalties and Sanctions** — NERC shall review all Penalties, sanctions, and ~~¶~~Remedial ~~a~~Action Directives imposed by each Regional Entity for violations of Reliability Standards, including Penalties, sanctions and Remedial Action Directives that are specified by a Regional Entity Hearing Body final decision issued pursuant to Attachment 2 to Appendix 4C, to determine if the Regional Entity's determination is supported by a sufficient record compiled by the Regional Entity, is consistent with the *Sanction Guidelines* incorporated into these Rules of Procedure as **Appendix 4B** and with other directives, guidance and directions issued by NERC pursuant to the delegation agreement, and is consistent with Penalties, sanctions and ~~¶~~Remedial ~~a~~Action Directives imposed by the Regional Entity and by other Regional Entities for violations involving the same or similar facts and circumstances.
2. **Developing Penalties and Sanctions** — The Regional Entity Compliance Staff shall use the *Sanction Guidelines*, which are incorporated into these Rules of Procedure as **Appendix 4B**, to develop an appropriate Penalty, sanction, or ~~¶~~Remedial ~~a~~Action Directive for a violation, and shall notify NERC of the Penalty, ~~or~~ sanction or Remedial Action Directive.
3. **Effective Date of Penalty** — Where authorized by applicable legislation or agreement, no Penalty imposed for a violation of a Reliability Standard shall take effect until the thirty-first day after NERC files, with the Applicable

Governmental Authority, a “Notice of Penalty” and the record of the proceedings in which the violation and Penalty were determined, or such other date as ordered by the Applicable Governmental Authority.

408. Review of NERC Decisions

1. **Scope of Review** — A Registered Entity or a Regional Entity wishing to challenge a finding of noncompliance and the imposition of a Penalty for a compliance measure directly administered by NERC, or a Regional Entity wishing to challenge a Regional Entity Compliance Monitoring and Enforcement Program audit finding, may do so by filing a notice of the challenge with NERC’s [Director of Compliance and Enforcement](#) no later than 21 days after issuance of the notice of finding of violation or audit finding. Appeals by Registered Entities [or Regional Entities](#) of decisions of Regional Entity Hearing Bodies shall be pursuant to Section 409 .
2. **Contents of Notice** — The notice of challenge shall include the full text of the decision that is being challenged, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief.
3. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of challenge, the NERC [Director of Compliance and Enforcement](#) may file with the Hearing Panel a response to the issues raised in the notice, with a copy to the Regional Entity.
4. **Hearing by Compliance and Certification Committee** — The NERC Compliance and Certification Committee shall provide representatives of the Regional Entity or Registered Entity, and the NERC Compliance Monitoring and Enforcement Program an opportunity to be heard and shall decide the matter based upon the filings and presentations made, with a written explanation of its decision.
5. **Appeal** — The Regional Entity, or Registered Entity may appeal the decision of the Compliance and Certification Committee by filing a notice of appeal with NERC’s [Director of Compliance and Enforcement](#) no later than 21 days after issuance of the written decision by the Compliance and Certification Committee. The notice of appeal shall include the full text of the written decision of the Compliance and Certification Committee that is being appealed, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not presented to the Compliance and Certification Committee.
6. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of appeal, the NERC Compliance Monitoring and Enforcement Program staff may file its response to the issues raised in the notice of appeal, with a copy to the entity filing the notice.

7. **Reply** — The entity filing the appeal may file a reply within 7 days.
8. **Decision** — The Compliance Committee of the NERC Board of Trustees shall decide the appeal, in writing, based upon the notice of appeal, the record, the response, and any reply. At its discretion, the Compliance Committee may invite representatives of the Regional Entity or Registered Entity, and the NERC Compliance Monitoring and Enforcement Program to appear before the Compliance Committee. Decisions of the Compliance Committee shall be final, except for further appeal to the Applicable Governmental Authority.
9. **Impartiality** — No member of the Compliance and Certification Committee or the Board of Trustees Compliance Committee having an actual or perceived conflict of interest in the matter may participate in any aspect of the challenge or appeal except as a party or witness.
10. **Expenses** — Each party in the challenge and appeals processes shall pay its own expenses for each step in the process.
11. **Non-Public Proceedings** — All challenges and appeals shall be closed to the public to protect Confidential Information.

409. Appeals from Final Decisions of Regional ~~Entities~~ Entity Hearing Bodies

1. **Time for Appeal** — A Regional Entity acting as the Compliance Enforcement Authority, or an owner, operator or user of the Bulk Power System, ~~wishingshall be entitled~~ to appeal from a final decision of a Regional Entity Hearing Body concerning that finds an Alleged ~~v~~Violation of a Reliability Standard, or imposes a proposed Penalty or sanction for violation of a Reliability Standard, a proposed Mitigation Plan, or a proposed Remedial Action Directive, ~~shall file its by filing a~~ notice of appeal with NERC's ~~D~~director of Complianceenforcement, with a ~~copy~~copies to the Regional Entity and any other Participants in the Regional Entity Hearing Body proceeding, no later than 21 days after issuance of the final decision of the Regional Entity Hearing Body. ~~The same appeal procedures will apply regardless of whether the matter first arose in a Compliance Investigation, Compliance Audit or Self Report, other compliance monitoring and enforcement process, or in a reliability readiness evaluation.~~
2. **Contents** — The notice of appeal shall include the full text of the final decision of the Regional Entity Hearing Body that is being appealed, a concise statement of the error or errors contained in the final decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not first presented during the compliance hearingproceeding before the Regional Entity Hearing Body.
3. **Response to Notice of Appealby Regional Entity** — Within 21 days after the date receiving a copy of the notice of appeal is filed, the Regional Entity shall file the entire record of the matterRegional Entity Hearing Body proceeding with NERC's ~~D~~director of Complianceenforcement, ~~with a copy to the Registered~~

~~Entity filing the notice, together with~~ Within 35 days after the date of the notice of appeal, all Participants in the proceeding before the Regional Entity Hearing Body, other than the Participant filing the notice of appeal, shall file their~~s~~ responses to the issues raised in the notice of appeal.

4. **Reply** — The Registered Entity filing the appeal may file a reply to the ~~responses~~Regional Entity within 7 days.
5. **Decision** — The Compliance Committee of the NERC Board of Trustees shall decide the appeal, in writing, based upon the notice of appeal, the record of the ~~matter from proceeding before~~ the Regional Entity Hearing Body, the responses, and any reply filed with NERC. At its discretion, the Compliance Committee may invite representatives of the ~~Registered E~~ntity making the appeal and the other Participants in the proceeding before the Regional Entity Hearing Body to appear before the Committee. Decisions of the Compliance Committee shall be final, except for further appeal to the Applicable Governmental Authority.
6. **Expenses** — Each party in the appeals process shall pay its own expenses for each step in the process.
7. **Non-Public Proceedings** — All appeals shall be closed to the public to protect Confidential Information.

8. **Appeal of Hearing Body Decisions Granting or Denying Motions to Intervene** — This section is not applicable to an appeal of a decision of a Regional Entity Hearing Body granting or denying a motion to intervene in the Regional Entity Hearing Body proceeding. Appeals of decisions of Regional Entity Hearing Bodies granting or denying motions to intervene in Regional Entity Hearing Body proceedings shall be processed and decided pursuant to Section 414.

410. Hold Harmless

A condition of invoking the challenge or appeals processes under Section 408 or 409 is that the entity requesting the challenge or appeal agrees that neither NERC (defined to include its Members, Board of Trustees, committees, subcommittees, staff and industry subject matter experts), any person assisting in the challenge or appeals processes, nor any company employing a person assisting in the challenge or appeals processes, shall be liable, and they shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the challenge or appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.

411. Requests for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Reliability Standards

A Registered Entity that is subject to an Applicable Requirement of a NERC Critical Infrastructure Protection Standard for which Technical Feasibility Exceptions are

permitted, may request a Technical Feasibility Exception to the Requirement, and the request will be reviewed, approved or disapproved, and if approved, implemented, in accordance with the NERC *Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standard*, Appendix 4D to these Rules of Procedure.

412. Certification of Questions from Regional Entity Hearing Bodies for Decision by the NERC Board of Trustees Compliance Committee

1. A Regional Entity Hearing Body that is conducting a hearing concerning a disputed compliance matter pursuant to Attachment 2, Hearing Procedures, of Appendix 4C, may certify to the 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 hearing in whole or in part, and as to which there are other extraordinary circumstances that make prompt consideration of the question by the Compliance Committee appropriate, in accordance with Section 1.5.12 of the Hearing Procedures. All questions certified by a Regional Entity Hearing Body to the Board of Trustees shall be considered and disposed of by the Compliance Committee.
2. The Compliance Committee may accept or reject a certification of a question for decision. If the Compliance Committee rejects the certified question, it shall issue a written statement that the certification is rejected.
3. If the Compliance Committee accepts the certification of a question for decision, it shall establish a schedule by which the Participants in the hearing before the Regional Entity Hearing Body may file memoranda and reply memoranda stating their positions as to how the question certified for decision should be decided by the Compliance Committee. The Compliance Committee may also request, or provide an opportunity for, the NERC compliance operations department, the NERC compliance enforcement department, and/or the NERC general counsel to file memoranda stating their positions as to how the question certified for decision should be decided. After receiving such memoranda and reply memoranda as are filed in accordance with the schedule, the Compliance Committee shall issue a written decision on the certified question.
4. Upon receiving the Compliance Committee's written decision on the certified question, the Regional Entity Hearing Body shall proceed to complete the hearing in accordance with the Compliance Committee's decision.
5. The Compliance Committee's decision, if any, on the certified question shall only be applicable to the hearing from which the question was certified and to the Participants in that hearing.

413. Review and Processing of Regional Entity Hearing Body Final Decisions that Are Not Appealed

NERC shall review and process all final decisions of Regional Entity Hearing Bodies issued pursuant to Attachment 2 to Appendix 4C concerning an Alleged Violation, proposed Penalty or sanction, or proposed Mitigation Plan that are not appealed pursuant to Section 409, as though the determination had been made by the Regional Entity Compliance Monitoring and Enforcement Program. NERC shall review and process such final decisions, and may require that they be modified by the Regional Entity, in accordance with, as applicable to the particular decision, Sections 5.8, 5.9 and 6.5 of Appendix 4C.

414. Appeals of Decisions of Regional Entity Hearing Bodies Granting or Denying Motions to Intervene in Regional Entity Hearing Body Proceedings

- 1. Time to Appeal** — An entity may appeal a decision of a Regional Entity Hearing Body under Section 1.4.4 of Attachment 2 of Appendix C denying the entity's motion to intervene in a Regional Entity Hearing Body proceeding, and the Regional Entity Compliance Staff or any other Participant in the Regional Entity Hearing Body proceeding may appeal a decision of the Regional Entity Hearing Body under Section 1.4.4 of Attachment 2 of Appendix C granting or denying a motion to intervene in the Regional Entity Hearing Body proceeding, in either case by filing a notice of appeal with the NERC director of enforcement, with copies to the Regional Entity Clerk, the Regional Entity Hearing body, the Hearing Officer, the Regional Entity Compliance Staff, and all other Participants in the Regional Entity Hearing Body proceeding, no later than seven (7) days following the date of the Regional Entity Hearing Body decision granting or denying the motion to intervene.
- 2. Contents of Notice of Appeal** — The notice of appeal shall set forth information and argument to demonstrate that the decision of the Regional Entity Hearing Body granting or denying the motion to intervene was erroneous under the grounds for intervention specified in Section 1.4.4 of Attachment 2 of Appendix 4C and that the entity requesting intervention should be granted or denied intervention, as applicable. Facts alleged in, and any offers of proof made in, the notice of appeal shall be supported by affidavit or verification. The notice of appeal shall include a copy of the original motion to intervene and a copy of the decision of the Regional Entity Hearing Body granting or denying the motion to intervene.
- 3. Responses to Notice of Appeal** — Within ten (10) days following the date the notice of appeal is filed, the Regional Entity Clerk shall transmit to the NERC director of enforcement copies of all pleadings filed in the Regional Entity Hearing Body proceeding on the motion to intervene. Within fourteen (14) days following the date the notice of appeal is filed, the Regional Entity Hearing Body, the Regional Entity Compliance Staff, and any other Participants in the Regional Entity Hearing Body proceeding, may each file a response to the notice of appeal with the NERC director of enforcement. Within seven (7) days following the last day for filing responses, the entity filing the notice of appeal, and any Participant

in the Regional Entity Hearing Body proceeding that supports the appeal, may file replies to the responses with the NERC director of enforcement.

4. **Disposition of Appeal** — The appeal shall be considered and decided by the Compliance Committee. The NERC director of enforcement shall provide copies of the notice of appeal and any responses and replies to the Compliance Committee. The Compliance Committee shall issue a written decision on the appeal; provided, that if the Compliance Committee does not issue a written decision on the appeal within forty-five (45) days following the date of filing the notice of appeal, the appeal shall be deemed denied and the decision of the Regional Entity Hearing Body granting or denying the motion to intervene shall stand. The NERC director of enforcement shall transmit copies of the Compliance Committee's decision, or shall provide notice that the forty-five (45) day period has expired with no decision by the Compliance Committee, to the Regional Entity Clerk, the Regional Entity Hearing Body, the entity filing the notice of appeal, the Regional Entity Compliance Staff, and any other Participants in the Regional Entity Hearing Body proceeding that filed responses to the notice of appeal or replies to responses.
5. **Appeal of Compliance Committee Decision to FERC or Other Applicable Governmental Authority** — Any entity aggrieved by the decision of the Compliance Committee on an appeal of a Regional Entity Hearing Body decision granting or denying a motion to intervene in a Regional Entity Hearing Body proceeding (including a denial of such appeal by the expiration of the forty-five (45) day period as provided in Section 414.4) may appeal or petition for review of the decision of the Compliance Committee to FERC or to another Applicable Governmental Authority having jurisdiction over the matter, in accordance with the authorities, rules and procedures of FERC or such other Applicable Governmental Authority. Any such appeal or petition for review shall be filed within the time period, if any, and in the form and manner, specified by the applicable statutes, rules or regulations governing proceedings before FERC or the other Applicable Governmental Authority.

SECTION 500 — ORGANIZATION REGISTRATION AND CERTIFICATION

501. Scope of the Organization Registration and Organization Certification Programs

The purpose of the Organization Registration Program is to clearly identify those entities that are responsible for compliance with the FERC approved Reliability Standards. Organizations that are registered are included on the NERC Compliance Registry (NCR) and are responsible for knowing the content of and for complying with all applicable Reliability Standards. Registered Entities are not and do not become Members of NERC or a Regional Entity, by virtue of being listed on the NCR. Membership in NERC is governed by Article II of NERC's Bylaws; membership in a Regional Entity or regional reliability organization is governed by that entity's bylaws or rules.

The purpose of the Organization Certification Program is to ensure that the new entity (i.e., applicant to be an RC, BA, or TOP that is not already performing the function for which it is applying to be certified as) has the tools, processes, training, and procedures to demonstrate their ability to meet the Requirements/sub-Requirements of all of the Reliability Standards applicable to the function(s) for which it is applying thereby demonstrating the ability to become certified and then operational.

Organization Registration and Organization Certification may be delegated to Regional Entities in accordance with the procedures in this Section 500; the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into these Rules of Procedure as **Appendix 5A**; and, approved Regional Entity delegation agreements or other applicable agreements.

1. **NERC Compliance Registry** — NERC shall establish and maintain the NCR of the Bulk Power System owners, operators, and users that are subject to approved Reliability Standards.
 - 1.1 (a) The NCR shall set forth the identity and functions performed for each organization responsible for meeting Requirements/sub-Requirements of the Reliability Standards. Bulk Power System owners, operators, and users (i) shall provide to NERC and the applicable Regional Entity information necessary to complete the Registration, and (ii) shall provide NERC and the applicable Regional Entity with timely updates to information concerning the Registered Entity's ownership, operations, contact information, and other information that may affect the Registered Entity's Registration status or other information recorded in the Compliance Registry.
 - (b) A generation or transmission cooperative, a joint-action agency or another organization may register as a Joint Registration Organization (JRO), in lieu of each of the JRO's members or related entities being registered individually for one or more functions. Refer to Section 507.

(c) Multiple entities may each register using a Coordinated Functional Registration (CFR) for one or more Reliability Standard(s) and/or for one or more Requirements/sub-Requirements within particular Reliability Standard(s) applicable to a specific function pursuant to a written agreement for the division of compliance responsibility. Refer to Section 508.

- 1.2 In the development of the NCR, NERC and the Regional Entities shall determine which organizations should be placed on the NCR based on the criteria provided in the NERC *Statement of Compliance Registry Criteria* which is incorporated into these Rules of Procedure as **Appendix 5B**.
- 1.3 NERC and the Regional Entities shall use the following rules for establishing and maintaining the NCR based on the Registration criteria as set forth in **Appendix 5B** *Statement of Compliance Registry Criteria*:
 - 1.3.1 NERC shall notify each organization that it is on the NCR. The Registered Entity is responsible for compliance with all the Reliability Standards applicable to the functions for which it is registered from the time it receives the Registration notification from NERC.
 - 1.3.2 Any organization receiving such a notice may challenge its placement on the NCR according to the process in **Appendix 5A** *Organization Registration and Organization Certification Manual*, Section V.
 - 1.3.3 The Compliance Committee of the Board of Trustees shall promptly issue a written decision on the challenge, including the reasons for the decision.
 - 1.3.4 The decision of the Compliance Committee of the Board of Trustees shall be final unless, within 21 days of the date of the Compliance Committee of the Board of Trustees decision, the organization appeals the decision to the Applicable Governmental Authority.
 - 1.3.5 Each Registered Entity identified on the NCR shall notify its corresponding Regional Entity(s) of any corrections, revisions, deletions, changes in ownership, corporate structure, or similar matters that affect the Registered Entity's responsibilities with respect to the Reliability Standards. Failure to notify will not relieve the Registered Entity from any responsibility to comply with the Reliability Standards or shield it from any Penalties or sanctions associated with failing to comply with the Reliability Standards applicable to its associated Registration.

- 1.4 For all geographical or electrical areas of the Bulk Power System, the Registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and required by the Reliability Standards to the fullest extent practical, and (2) there is no unnecessary duplication of such coverage or of required oversight of such coverage. In particular the process shall:
 - 1.4.1 Ensure that all areas are under the oversight of one and only one Reliability Coordinator.
 - 1.4.2 Ensure that all Balancing Authorities and Transmission Operator entities² are under the responsibility of one and only one Reliability Coordinator.
 - 1.4.3 Ensure that all transmission Facilities of the Bulk Power System are the responsibility and under the control of one and only one Transmission Planner, Planning Authority, and Transmission Operator.
 - 1.4.4 Ensure that all Loads and generators are under the responsibility and control of one and only one Balancing Authority.
- 1.5 NERC shall maintain the NCR of organizations responsible for meeting the Requirements/sub-Requirements of the Reliability Standards currently in effect on its website and shall update the NCR monthly.
2. **Entity Certification** — NERC shall provide for Certification of all entities with primary reliability responsibilities requiring Certification. This includes those entities that satisfy the criteria established in the NERC provisional Certification process. The NERC programs shall:
 - 2.1 Evaluate and certify the competency of entities performing reliability functions. The entities presently expected to be certified include Reliability Coordinators, Transmission Operators, and Balancing Authorities.
 - 2.2 Evaluate and certify each applicant's ability to meet the requirements for Certification.
 - 2.3 Maintain process documentation.
 - 2.4 Maintain records of currently certified entities.

² Some organizations perform the listed functions (e.g., Balancing Authority, Transmission Operator) over areas that transcend the Footprints of more than one Reliability Coordinator. Such organizations will have multiple Registrations, with each such Registration corresponding to that portion of the organization's overall area that is within the Footprint of a particular Reliability Coordinator.

- 2.5 Issue a Certification document to the applicant that successfully demonstrates its competency to perform the evaluated functions.

3. Delegation and Oversight

- 3.1 NERC may delegate responsibilities for Organization Registration and Organization Certification to Regional Entities in accordance with requirements established by NERC. Delegation will be via the delegation agreement between NERC and the Regional Entity or other applicable agreement. The Regional Entity shall administer Organization Registration and Organization Certification Programs in accordance with such delegations to meet NERC's programs goals and requirements subject to NERC oversight.
- 3.2 NERC shall develop and maintain a plan to ensure the continuity of Organization Registration and Organization Certification within the geographic or electrical boundaries of a Regional Entity in the event that no entity is functioning as a Regional Entity for that Region, or the Regional Entity withdraws as a Regional Entity, or does not operate its Organization Registration and Organization Certification Programs in accordance with delegation agreements.
- 3.3 NERC shall develop and maintain a program to monitor and oversee the NERC Organization Registration and Organization Certification Programs activities that are delegated to each Regional Entity through a delegation agreement or other applicable agreement.
 - 3.3.1 This program shall monitor whether the Regional Entity carries out those delegated activities in accordance with NERC requirements, and whether there is consistency, fairness of administration, and comparability.
 - 3.3.2 Monitoring and oversight shall be accomplished through direct participation in the Organization Registration and Organization Certification Programs with periodic reviews of documents and records of both programs.

502. Organization Registration and Organization Certification Program Requirements

1. NERC shall maintain the Organization Registration and Organization Certification Programs.
 - 1.1 The roles and authority of Regional Entities in the programs are delegated from NERC pursuant to the Rules of Procedure through regional delegation agreements or other applicable agreements.

- 1.2 Processes for the programs shall be administered by NERC and the Regional Entities. Materials that each Regional Entity uses are subject to review and approval by NERC.
 - 1.3 The appeals process for the Organization Registration and Organization Certification Programs are identified in **Appendix 5A** *Organization Registration and Organization Certification Manual*, Sections V and VI, respectively.
 - 1.4 The Certification Team membership is identified in **Appendix 5A** *Organization Registration and Organization Certification Manual*, Section IV.8.d.
2. To ensure consistency and fairness of the Organization Registration and Organization Certification Programs, NERC shall develop procedures to be used by all Regional Entities and NERC in accordance with the following criteria:
- 2.1 NERC and the Regional Entities shall have data management processes and procedures that provide for confidentiality, integrity, and retention of data and information collected.
 - 2.2 Documentation used to substantiate the conclusions of the Regional Entity/ NERC related to Registration and/or Certification must be retained by the Regional Entity for (6) six years, unless a different retention period is otherwise identified, for the purposes of future audits of these programs.
 - 2.3 To maintain the integrity of the NERC Organization Registration and Organization Certification Programs, NERC, Regional Entities, Certification Team members, program audit team members (Section 506), and committee members shall maintain the confidentiality of information provided by an applicant or entities.
 - 2.2.1 NERC and the Regional Entities shall have appropriate codes of conduct and confidentiality agreements for staff, Certification Team, Certification related committees, and Certification program audit team members.
 - 2.2.2 NERC, Regional Entities, Certification Team members, program audit team members and committee members shall maintain the confidentiality of any Registration or Certification-related discussions or documents designated as confidential (see Section 1500 for types of Confidential Information).
 - 2.2.3 NERC, Regional Entities, Certification Team members, program audit team members and committee members shall treat as confidential the individual comments expressed during evaluations, program audits and report-drafting sessions.

- 2.2.4 Copies of notes, draft reports, and other interim documents developed or used during an entity Certification evaluation or program audit shall be destroyed after the public posting of a final, uncontested report.
- 2.2.5 Information deemed by an applicant, entity, a Regional Entity, or NERC as confidential, including Critical Energy Infrastructure Information, shall not be released publicly or distributed outside of a committee or team.
- 2.2.6 In the event that an individual violates any of the confidentiality rules set forth above, that individual and any member organization with which the individual is associated will be subject to immediate dismissal from the audit team and may be prohibited from future participation in Compliance Monitoring and Enforcement Program activities by the Regional Entity or NERC.
- 2.2.7 NERC shall develop and provide training in auditing skills to all individuals prior to their participation in Certification evaluations. Training for Certification Team leaders shall be more comprehensive than the training given to industry subject matter experts and Regional Entity members. Training for Regional Entity members may be delegated to the Regional Entity.
- 2.4 An applicant that is determined to be competent to perform a function after completing all Certification requirements shall be deemed certified by NERC to perform that function for which it has demonstrated full competency.

2.4.1 All NERC certified entities shall be included on the NCR.

503. Regional Entity Implementation of Organization Registration and Organization Certification Program Requirements

- 1. **Delegation** — Recognizing the Regional Entity’s knowledge of and experience with their members, NERC may delegate responsibility for Organization Registration and Organization Certification to the Regional Entity through a delegation agreement.
- 2. **Registration** — The following Organization Registration activities shall be managed by the Regional Entity per the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into the Rules of Procedure as Appendix 5A *Organization Registration and Organization Certification Manual*:
 - 2.1 Regional Entities shall verify that all Reliability Coordinators, Balancing Authorities, and Transmission Operators meet the Registration requirements of Section 501(1.4).

3. **Certification** — The following Organization Certification activities shall be managed by the Regional Entity in accordance with an approved delegation agreement or another applicable agreement:
 - 3.1 An entity seeking Certification to perform one of the functions requiring Certification shall contact the Regional Entity for the Region(s) in which it plans to operate to apply for Certification.
 - 3.2 An entity seeking Certification and other affected entities shall provide all information and data requested by NERC or the Regional Entity to conduct the Certification process.
 - 3.3 Regional Entities shall notify NERC of all Certification applicants.
 - 3.4 NERC and/or the Regional Entity shall evaluate the competency of entities requiring Certification to meet the NERC Certification requirements.
 - 3.5 NERC or the Regional Entity shall establish Certification procedures to include evaluation processes, schedules and deadlines, expectations of the applicants and all entities participating in the evaluation and Certification processes, and requirements for Certification Team members.
 - 3.5.1 The NERC / Regional Entity Certification procedures will include provisions for on-site visits to the applicant's facilities to review the data collected through questionnaires, interviewing the operations and management personnel, inspecting the facilities and equipment (including requesting a demonstration of all tools identified in the Certification process), reviewing all necessary documents and data (including all agreements, processes, and procedures identified in the Certification process), reviewing Certification documents and projected system operator work schedules, and reviewing any additional documentation needed to support the completed questionnaire or inquiries arising during the site visit.
 - 3.5.2 The NERC/ Regional Entity Certification procedures will provide for preparation of a written report by the Certification Team, detailing any deficiencies that must be resolved prior to granting Certification, along with any other recommendations for consideration by the applicant, the Regional Entity, or NERC.

504. Appeals

1. NERC shall maintain an appeals process to resolve any disputes related to Registration or Certification activities per the *Organization Registration and Organization Certification Manual*, which is incorporated in these Rules of Procedure as Appendix 5A.

2. The Regional Entity Certification appeals process shall culminate with the Regional Entity board or a committee established by and reporting to the Regional Entity board as the final adjudicator, provided that where applicable, Canadian provincial governmental authorities may act as the final adjudicator in their jurisdictions. NERC shall be notified of all appeals and may observe any proceedings (**Appendix 5A** *Organization Registration and Organization Certification Manual*).

505. Program Maintenance

NERC shall maintain its program materials, including such manuals or other documents as it deems necessary, of the governing policies and procedures of the Organization Registration and Organization Certification Programs.

506. Independent Audit of NERC Organization Registration and Organization Certification Program

1. NERC, through the Compliance and Certification Committee, shall provide for an independent audit of its Organization Registration and Organization Certification Programs at least once every three years, or more frequently, as determined by the Board. The audit shall be conducted by independent expert auditors as selected by the Board.
2. The audit shall evaluate the success, effectiveness and consistency of the NERC Organization Registration and Organization Certification Programs.
3. The final report shall be posted by NERC for public viewing.
4. If the audit report includes recommendations to improve the program, the administrators of the program shall provide a written response to the Board within 30 days of the final report, detailing the disposition of each and every recommendation, including an explanation of the reasons for rejecting a recommendation and an implementation plan for the recommendations accepted.

507. Provisions Relating to Joint Registration Organizations (JRO)

1. In addition to registering as the entity responsible for all functions that it performs itself, an entity may register as a JRO on behalf of one or more of its members or related entities for one or more functions for which such members or related entities would otherwise be required to register and, thereby, accept on behalf of such members or related entities all compliance responsibility for that function or those functions including all reporting requirements. Any entity seeking to register as a JRO must submit a written agreement with its members or related entities for all Requirements/sub-Requirements for the function(s) for which the entity is registering for and takes responsibility for, which would otherwise be the responsibility of one or more of its members or related entities. Neither NERC nor

the Regional Entity shall be parties to any such agreement, nor shall NERC or the Regional Entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the JRO Registration.

2. The JRO Registration data must include the same Registration information as a normal compliance Registration entry. The JRO is responsible for providing all of the information and data, including submitting reports, as needed by the Regional Entity for performing assessments of compliance.
3. The Regional Entity shall notify NERC of each JRO that the Regional Entity accepts. The notification will identify the point of contact and the function(s) being registered for on behalf of its members or related entities.
4. For purposes of Compliance Audits, the Regional Entity shall keep a list of all JROs. This document shall contain a list of each JRO's members or related entities and the function(s) for which the JRO is registered for that member(s) or related entity(s). It is the responsibility of the JRO to provide the Regional Entity with this information as well as the applicable JRO agreement(s).
5. The Regional Entity may request clarification of any list submitted to it that identifies the members of the JRO and may request such additional information as the Regional Entity deems appropriate.
6. The Regional Entity's acceptance of a JRO shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded the JRO will meet the Registration requirements of Section 501(1.4).
7. NERC shall maintain, and post on its website, a JRO registry listing all JRO Registrations that have been reviewed and accepted by the Regional Entity. The posting shall identify the JRO entity taking compliance responsibilities for itself and its members.
8. The JRO shall inform the Regional Entity of any changes to an existing JRO. The Regional Entity shall promptly notify NERC of each such revision.
9. Nothing in Section 507 shall preclude a member of a JRO, a related entity, or any other entity from registering on its own behalf and undertaking full compliance responsibility including reporting Requirements for the Reliability Standards applicable to the function(s) for which the member or other entity is registering. A JRO member or related entity that registers as responsible for any Reliability Standard or Requirement/sub-Requirement of a Reliability Standard shall inform the JRO of its Registration.

508. Provisions Relating to Coordinated Functional Registration (CFR) Entities

1. In addition to registering as an entity responsible for all functions that it performs itself, multiple entities may each register using a CFR for one or more Reliability

Standard(s) and/or for one or more Requirements/sub-Requirements within particular Reliability Standard(s) applicable to a specific function. The CFR submission must include a written agreement that governs itself and clearly specifies the entities' respective compliance responsibilities. The Registration of the CFR is the complete Registration for each entity. Additionally, each entity shall take full compliance responsibility for those Reliability Standards and/or Requirements/sub-Requirements it has registered for in the CFR. Neither NERC nor the Regional Entity shall be parties to any such agreement, nor shall NERC or the Regional Entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the CFR.

2. Each CFR or each individual entity within a CFR must identify a point of contact that is responsible for providing information and data, including submitting reports as needed by the Regional Entity related to the CFR Registration.
3. The Regional Entity shall notify NERC of each CFR that the Regional Entity accepts.
4. NERC or the Regional Entity may request clarification of any list submitted to it that identifies the compliance responsibilities of the CFR and may request such additional information as NERC or the Regional Entity deems appropriate.
5. The Regional Entity's acceptance of that CFR shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded the CFR will meet the Registration requirements of Section 501(1.4).
6. NERC shall maintain, and post on its website, a CFR registry listing all CFR Registrations that have been accepted by NERC or by a Regional Entity. The posting shall clearly list all the Reliability Standards or Requirements/sub-Requirements thereof for which each entity of the CFR is responsible for under the CFR.
7. The point of contact shall inform the Regional Entity of any changes to an existing CFR. The Regional Entity shall promptly notify NERC of each such revision.
8. In the event of a violation of a Reliability Standard or of a Requirement/sub-Requirement of a Reliability Standard for which an entity of a CFR is registered, that entity shall be identified in the Notice of Alleged Violation and shall be assessed the sanction or Penalty in accordance with the NERC Sanctions Guidelines. In the event a Regional Entity is not able to determine which entity(ies) is responsible for a particular Reliability Standard, or Requirements/sub-Requirements thereof that has been violated, the Regional Entity shall investigate the noncompliance in accordance with the NERC Rules of Procedure Section 400, *Compliance Enforcement*, to determine the entity(ies) to which the Regional Entity shall to issue the sanction or Penalty for the violation.

9. Nothing in Section 508 shall preclude an entity registered in a CFR, or any other entity from registering on its own behalf and undertaking full compliance responsibility including reporting Requirements for the Reliability Standards applicable to the function(s) for which the entity is registering. An entity registered in a CFR that registers as responsible for any Reliability Standard or Requirement/sub-Requirement of a Reliability Standard shall inform the point of contact of its Registration.

509. Exceptions to the Definition of the Bulk Electric System

An Element is considered to be (or not be) part of the Bulk Electric System by applying the BES Definition to the Element (including the inclusions and exclusions set forth therein). Appendix 5C sets forth the procedures by which (i) an entity may request a determination that an Element that falls within the definition of the Bulk Electric System should be exempted from being considered a part of the Bulk Electric System, or (ii) an entity may request that an Element that falls outside of the definition of the Bulk Electric System should be considered part of the Bulk Electric System.

SECTION 600 — PERSONNEL CERTIFICATION

601. Scope of Personnel Certification

Maintaining the reliability of the Bulk Electric System through implementation of the Reliability Standards requires skilled, trained and qualified system operators. The ~~Personnel System Operator~~ Certification Program provides the mechanism to ensure system operators are provided the education and training necessary to obtain the essential knowledge and skills and are therefore qualified to operate the Bulk Electric System. The Personnel Certification 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. NERC, as the ERO, will ensure skilled, trained, and qualified system operators through the ~~System Operator Personnel~~ Certification Program.

Except as necessary to obtain approval of the Rules of Procedure, 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.

~~NERC shall develop and maintain a personnel Certification program to evaluate individuals and to issue Credentials to individuals who demonstrate the required level of competence. A current version of such a program is the System Operator Certification Program Manual, which is incorporated into these Rules of Procedure as Appendix 6.~~

602. Structure of ERO Personnel Certification Program

1. The NERC ~~P~~ersonnel Certification ~~p~~rogram shall be international in scope.
2. The ~~PCGC personnel Certification program~~ shall ~~have a governing body that~~ (1) ~~is~~ be able to independently exercise decision-making for all matters pertaining to Certification, (2) includes individuals from the discipline being certified and whose composition addresses the needs of the users of the program (e.g., employers, regulators, etc.), and (3) ~~has~~ have representation for each specialty or level within a discipline.
3. NERC shall maintain a nominating process for membership in the governing body. Nominations shall be open to all interested parties and self-nominations shall be accepted. The NERC Board of Trustees shall appoint members to the governing body from among those nominated. The members of the governing body shall serve at the pleasure of the Board.
4. The ~~PCGC personnel Certification program governing body~~ shall have control over the matters related to the ~~P~~ersonnel Certification and re-Certification ~~p~~Programs listed below, without being subject to approval by any other body.
 - 4.1 Policies and procedures, including eligibility requirements and application processing.

- 4.2 Requirements for personnel Certification, maintaining Certification, and re-Certification.
 - 4.3 Examination content, development, and administration.
 - 4.4 Examination cut score.
 - 4.5 Grievance and disciplinary processes.
 - 4.6 Governing body and subgroup(s)' meeting rules including agenda, frequency, and related procedures.
 - 4.7 Subgroup(s) appointments and work assignments.
 - 4.8 Publications about personnel Certification and re-Certification.
 - 4.9 Setting fees for application, and all other services provided as a part of the personnel Certification and re-Certification activities.
 - 4.10 Program funding, spending, and budget authority. Financial matters related to the operation of the program shall be segregated from other NERC activities.
5. The ~~P~~ersonnel Certification ~~P~~rogram shall utilize written procedures for the selection of members of the governing body that prohibit the governing body from selecting a majority of its successors.
 6. The ~~p~~ersonnel Certification ~~P~~rogram shall be separate from the accreditation and education functions of NERC in related disciplines.
 7. No member of the ~~PCGC personnel Certification program governing body~~ or staff member working with the ~~P~~ersonnel Certification ~~P~~rogram governing body shall have or exercise any authority or responsibility for compliance matters related to Reliability Standards concerning personnel Certification.

603. Examination and Maintenance of NERC System Operator Certification Credentials

1. System operators seeking to obtain a Credential must pass an examination to earn the Credential.
2. A certificate will be issued to successful candidates which is valid for three years.
3. A system operator must earn Continuing Education Hours (CE Hours) in NERC-Approved Learning Activities within the three-year period preceding the expiration date of his/her certificate as determined by the PCGC and posted in the NERC System Operator Program Manual. A system operator must request a renewal and submit the appropriate fee for Certification renewal evaluation.

4. The Credential of a certified system operator who does not accumulate the required number and balance of CE Hours within the three-year period will be Suspended. A system operator with a Suspended certificate cannot perform any task that requires an operator to be NERC-certified. The system operator with a Suspended Credential will have up to twelve months to acquire the necessary CE Hours.
 - 4.1 During the time of suspension, the original anniversary date will be maintained. Therefore, should the system operator accumulate the required number of CE Hours within the twelve month suspension period, he/she will be issued a certificate that will be valid for three years from the previous expiration date.
 - 4.2 At the end of the twelve-month suspension period, if the system operator has not accumulated the required number of CE Hours, the Credential will be Revoked and all CE Hours earned will be forfeited. After a Credential is Revoked, the system operator will be required to pass an examination to become certified.
5. Hardship: Due to unforeseen events and extenuating circumstances, a certified system operator may be unable to accumulate the necessary CE Hours in the time frame required by the Personnel Certification Program to maintain the Credential. In such an event, the individual must submit a written request containing a thorough explanation of the circumstances and supporting information to the NERC Personnel Certification Manager. The PCGC retains the right to invoke this hardship clause as it deems appropriate to address such events or circumstances.

604. Dispute Resolution Process

1. Any dispute arising under the NERC agreement establishing the *NERC Personnel Certification Program* or from the establishment of any NERC rules, policies, or procedures dealing with any segment of the Certification process shall be subject to the NERC System Operator Certification Dispute Resolution 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.
2. Dispute Resolution Process consists of three steps.
 - 2.1. Notify NERC Personnel Certification Program Staff: This first step can usually resolve the issues without further actions. It is expected that most disputes will be resolved at this step. If the issue(s) is not resolved to the satisfaction of the parties involved in the first step, the issue can be brought to the PCGC Dispute Resolution Task Force.

- 2.2. PCGC Dispute Resolution Task Force: If the NERC staff did not resolve the issue(s) to the satisfaction of the parties involved, a written request must be submitted to the chairman of the PCGC through NERC staff explaining the issue(s) and requesting further action. Upon receipt of the letter, the PCGC chairman will present the request to the PCGC Dispute Resolution Task Force for action. This task force consists of three current members of the PCGC. The PCGC Dispute Resolution Task Force will investigate and consider the issue(s) presented and make a decision. This decision will then be communicated to the submitting party, the PCGC chairman, and the NERC staff within 45 calendar days of receipt of the request.
3. Personnel Certification Governance Committee: If the PCGC Dispute Resolution Task Force's decision did not resolve the issue(s) to the satisfaction of the parties involved, the final step in the process is for the issue(s) to be brought before the PCGC. Within 45 days of the date of the Task Force's decision, the disputing party shall submit a written request to the PCGC chairman through NERC staff requesting that the issue(s) be brought before the PCGC for resolution. The chairman shall see that the necessary documents and related data are provided to the PCGC members as soon as practicable. The PCGC will then meet or conference to discuss the issue(s) and make their decision within 60 calendar days of the chairman's receipt of the request. The decision will be provided to the person bringing the issue(s) and the NERC staff. The PCGC is the governing body of the Certification program and its decision is final.
4. Dispute Resolution Process Expenses: All individual expenses associated with the Dispute Resolution Process, including salaries, meetings, or consultant fees, shall be the responsibility of the individual parties incurring the expense.
5. Decision Process: Robert's Rules of Order shall be used as a standard of conduct for the Dispute Resolution Process. A majority vote of the members present will decide all issues. The vote will be taken in a closed session. No member of the PCGC may participate in the Dispute Resolution Process, other than as a party or witness, if he or she has an interest in the particular matter.

 - 5.1 A stipulation of invoking the Dispute Resolution Process is that the entity invoking the Dispute Resolution Process agrees that neither NERC (its members, Board of Trustees, committees, subcommittees, and staff), any person assisting in the Dispute Resolution Process, nor any company employing a person assisting in the Dispute Resolution Process, shall be liable, and they shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the Dispute Resolution Process. This "hold harmless" clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.

605. Disciplinary Action

1. Disciplinary action may be necessary to protect the integrity of the system operator Credential. The PCGC may initiate disciplinary action should an individual act in a manner that is inconsistent with expectations, including but not limited to:
 - 1.1. Willful, gross, and/or repeated violation of the NERC Reliability Standards as determined by a NERC investigation.
 - 1.2. Willful, gross, and/or repeated negligence in performing the duties of a certified system operator as determined by a NERC investigation.
 - 1.3. Intentional misrepresentation of information provided on a NERC application for a system operator Certification exam or to maintain a system operator Credential using CE Hours.
 - 1.4. Intentional misrepresentation of identification in the exam process, including a person identifying himself or herself as another person to obtain Certification for the other person.
 - 1.5. Any form of cheating during a Certification exam, including, but not limited to, bringing unauthorized reference material in the form of notes, crib sheets, or other methods of cheating into the testing center.
 - 1.6. A certified system operator's admission to or conviction of any felony or misdemeanor directly related to his/her duties as a system operator.
2. Hearing Process: Upon report to NERC of a candidate's or certified system operator's alleged misconduct, the NERC PCGC Credential Review Task Force will convene for the determination of facts. An individual, government agency, or other investigating authority can file a report. Unless the Task Force initially determines that the report of alleged misconduct is without merit, the candidate or certified system operator will be given the right to notice of the allegation. A hearing will be held and the charged candidate or certified system operator will be given an opportunity to be heard and present further relevant information. The Task Force may seek out information from other involved parties. The hearing will not be open to the public, but it will be open to the charged candidate or certified system operator and his or her representative. The Task Force will deliberate in a closed session, but the Task Force cannot receive any evidence during the closed session that was not developed during the course of the hearing.
3. Task Force's decision: The Task Force's decision will be unanimous and will be in writing with inclusion of the facts and reasons for the decision. The Task Force's written decision will be delivered to the PCGC and by certified post to the charged candidate or certified system operator. In the event that the Task Force is

unable to reach a unanimous decision, the matter shall be brought to the full committee for a decision.

3.1. No Action: Allegation of misconduct was determined to be unsubstantiated or inconsequential to the Credential.

3.2. Probation: A letter will be sent from NERC to the offender specifying:

3.2.1. The length of time of the probationary period (to be determined by the PCGC).

3.2.2. Credential will remain valid during the probationary period.

3.2.3. The probationary period does not affect the expiration date of the current certificate.

3.2.4. During the probationary period, a subsequent offense of misconduct, as determined through the same process as described above, may be cause for more serious consequences.

3.3. Revoke for Cause: A letter will be sent from NERC to the offender specifying:

3.3.1. The length of time of the probationary period (to be determined by the PCGC).

3.3.2. Credential is no longer valid.

3.3.3. Successfully passing an exam will be required to become recertified.

3.3.4. An exam will not be authorized until the revocation period expires

3.4. Termination of Credential: A letter will be sent from NERC to the offender specifying permanent removal of Credential.

4. Credential Review Task Force: The Credential Review Task Force shall be comprised of three active members of the PCGC assigned by the Chairman of the PCGC on an ad hoc basis. No one on the Credential Review Task Force may have an interest in the particular matter. The Task Force will meet in a venue determined by the Task Force chairman.

5. Appeal Process: The decision of the Task Force may be appealed using the NERC System Operator Certification Dispute Resolution Process.

603.606. Candidate Testing Mechanisms

1. The ~~P~~ersonnel Certification ~~P~~rogram shall utilize reliable testing mechanisms to evaluate individual competence in a manner that is objective, fair to all candidates, job-related, and based on the knowledge and skill needed to function in the discipline.
2. The ~~P~~ersonnel Certification ~~P~~rogram shall implement a formal policy of periodic review of the testing mechanisms to ensure ongoing relevance of the mechanisms to knowledge and skill needed in the discipline.
3. The ~~P~~ersonnel Certification ~~P~~rogram shall utilize policies and procedures to ensure that all test administration and development materials are secure and demonstrate that these policies and procedures are consistently implemented.
4. The ~~P~~ersonnel Certification ~~P~~rogram shall establish pass/fail levels that protect the public with a method that is based on competence and generally accepted in the psychometric community as being fair and reasonable.
5. The ~~P~~ersonnel Certification ~~P~~rogram shall conduct ongoing studies to substantiate the reliability and validity of the testing mechanisms.
6. The ~~P~~ersonnel Certification ~~P~~rogram shall utilize policies and procedures that govern how long examination records are kept in their original format.
7. The ~~P~~ersonnel Certification ~~P~~rogram shall demonstrate that different forms of the testing mechanisms assess equivalent content and that candidates are not penalized for taking forms of varying difficulty.

604.607. Public Information About the Personnel Certification Program

1. The ~~p~~ersonnel Certification ~~P~~rogram shall ~~provide for publishing and availability of general descriptive material on~~maintain and publish publicly a System Operator Certification Program Manual describing the procedures used in examination construction and validation; all eligibility requirements and determination; fees; and examination administration documents, including: reporting of results, re-Certification requirements, and disciplinary and ~~dispute resolution~~grievance procedures.
2. The ~~P~~ersonnel Certification ~~p~~rogram shall maintain and publish publicly~~and make available~~ a comprehensive summary or outline of the information, knowledge, or functions covered by ~~each~~the examination.
3. The ~~P~~ersonnel Certification ~~P~~rogram shall publish publicly and make available at least annually a summary of Certification activities for the program, including at least the following information: number of examinations delivered, the number passed, the number failed, and the number certified.

605.608. Responsibilities to Applicants for Certification or Re-Certification

The ~~P~~ersonnel Certification ~~P~~rogram:

1. Shall not discriminate among applicants as to age, gender, race, religion, national origin, disability, or marital status and shall include a statement of non-discrimination in announcements of the program.
2. Shall comply with all requirements of applicable federal and state/provincial laws with respect to all Certification and re-Certification activities, and shall require compliance of all contractors and/or providers of services.
3. Shall make available to all applicants copies of formalized procedures for application for, and attainment of, personnel Certification and re-Certification and shall uniformly follow and enforce such procedures for all applicants.
4. Shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.
5. Shall provide competently proctored examination sites.
6. Shall uniformly report examination results to applicants in a timely manner.
7. Shall give applicants failing the examination information on general content areas of deficiency.

~~8. Shall implement policies and procedures providing due process for applicants questioning eligibility determination, examination results, and Certification status, and shall publish this information. A current version of such a procedure is the NERC System Operator Certification Dispute Resolution Process, which is incorporated into these Rules of Procedure as part of Appendix 6.~~

~~9.8. Shall develop and maintain a program manual containing the processes and procedures for applicants for Certification and re-Certification.~~

606.609. Responsibilities to the Public and to Employers of Certified Practitioners

The ~~P~~ersonnel Certification ~~P~~rogram:

1. Shall demonstrate that the testing mechanisms adequately measure the knowledge and skill required for entry, maintenance, and/or advancement in the profession for each position to be certified.
2. Shall award Certification and re-Certification only after the skill and knowledge of the individual have been evaluated and determined to be acceptable.
3. Shall ~~periodically publish or~~ maintain, in an electronic format, a current list of those persons certified in the programs and have policies and procedures that delineate what information about a Credential holder may be made public and under what circumstances.

4. Shall have formal policies and procedures for discipline of a Credential holder, including the revocation of the certificate, for conduct deemed harmful to the public or inappropriate to the discipline (e.g., incompetence, unethical behavior, physical or mental impairment affecting performance). These procedures shall incorporate due process. ~~The current procedure is the *NERC Certified System Operator Credential Disciplinary Action Procedure*, which is incorporated into these Rules of Procedure as part of **Appendix 6**.~~
5. Shall demonstrate that any title or Credential awarded accurately reflects or applies to the practitioner's daily occupational or professional duties and is not confusing to employers, consumers, regulators, related professions, and/or other interested parties.

SECTION 700 — RELIABILITY READINESS EVALUATION AND IMPROVEMENT AND FORMATION OF SECTOR FORUMS

701. Confidentiality Requirements for Readiness Evaluations and Evaluation Team Members

1. All information made available or created during the course of any reliability readiness evaluation including, but not limited to, data, Documents, observations and notes, shall be maintained as confidential by all evaluation team members, in accordance with the requirements of Section 1500.
2. Evaluation team members are obligated to destroy all confidential evaluation notes following the posting of the final report of the reliability readiness evaluation.
3. NERC will retain reliability readiness evaluation-related documentation, notes, and materials for a period of time as defined by NERC.
4. These confidentiality requirements shall survive the termination of the NERC Reliability Readiness Evaluation and Improvement Program.

702. Formation of Sector Forum

1. NERC will form a sector forum at the request of any five members of NERC that share a common interest in the safety and reliability of the Bulk Power System. The members of sector forum may invite such others of the members of NERC to join the sector forum as the sector forum deems appropriate.
2. The request to form a sector forum must include a proposed charter for the sector forum. The Board must approve the charter.
3. NERC will provide notification of the formation of a sector forum to its membership roster. Notices and agendas of meetings shall be posted on NERC's website.
4. A sector forum may make recommendations to any of the NERC committees and may submit a Standards Authorization Request to the NERC *Reliability Standards Development Procedure*.

SECTION 800 — RELIABILITY ASSESSMENT AND PERFORMANCE ANALYSIS

801. Objectives of the Reliability Assessment and Performance Analysis Program

The objectives of the NERC Reliability Assessment and Performance Analysis Program are to: (1) conduct, and report the results of, an independent assessment of the overall reliability and adequacy of the interconnected North American Bulk Power Systems, both as existing and as planned; (2) analyze off-normal events on the Bulk Power System; (3) identify the root causes of events that may be precursors of potentially more serious events; (4) assess past reliability performance for lessons learned; (5) disseminate findings and lessons learned to the electric industry to improve reliability performance; and (6) develop reliability performance benchmarks. The final reliability assessment reports shall be approved by the Board for publication to the electric industry and the general public.

802. Scope of the Reliability Assessment Program

1. The scope of the Reliability Assessment Program shall include:
 - 1.1 Review, assess, and report on the overall electric generation and transmission reliability (adequacy and operating reliability) of the interconnected Bulk Power Systems, both existing and as planned.
 - 1.2 Assess and report on the key issues, risks, and uncertainties that affect or have the potential to affect the reliability of existing and future electric supply and transmission.
 - 1.3 Review, analyze, and report on Regional Entity self-assessments of electric supply and bulk power transmission reliability, including reliability issues of specific regional concern.
 - 1.4 Identify, analyze, and project trends in electric customer demand, supply, and transmission and their impacts on Bulk Power System reliability.
 - 1.5 Investigate, assess, and report on the potential impacts of new and evolving electricity market practices, new or proposed regulatory procedures, and new or proposed legislation (e.g. environmental requirements) on the adequacy and operating reliability of the Bulk Power Systems.
2. The Reliability Assessment Program shall be performed in a manner consistent with the Reliability Standards of NERC including but not limited to those that specify reliability assessment Requirements.

803. Reliability Assessment Reports

The number and type of periodic assessments that are to be conducted shall be at the discretion of NERC. The results of the reliability assessments shall be documented in three reports: the long-term and the annual seasonal (summer) and the annual seasonal (winter) assessment reports. NERC shall also conduct special reliability assessments from time to time as circumstances warrant. The reliability assessment reports shall be reviewed and approved for publication by the Board. The three regular reports are described below.

1. **Long-Term Reliability Assessment Report** — The annual long-term report shall cover a ten-year planning horizon. The planning horizon of the long-term reliability assessment report shall be subject to change at the discretion of NERC. Detailed generation and transmission adequacy assessments shall be conducted for the first five years of the review period. For the second five years of the review period, the assessment shall focus on the identification, analysis, and projection of trends in peak demand, electric supply, and transmission adequacy, as well as other industry trends and developments that may impact future electric system reliability. Reliability issues of concern and their potential impacts shall be presented along with any mitigation plans or alternatives. The long-term reliability assessment reports will generally be published in the fall (September) of each year. NERC will also publish electricity supply and demand data associated with the long-term reliability assessment report.
2. **Summer Assessment Report** — The annual summer seasonal assessment report typically shall cover the four-month (June–September) summer period. It shall provide an overall perspective on the adequacy of the generation resources and the transmission systems necessary to meet projected summer peak demands. It shall also identify reliability issues of interest and regional and subregional areas of concern in meeting projected customer demands and may include possible mitigation alternatives. The report will generally be published in mid-May for the upcoming summer period.
3. **Winter Assessment Report** — The annual winter seasonal assessment report shall cover the three-month (December–February) winter period. The report shall provide an overall perspective on the adequacy of the generation resources and the transmission systems necessary to meet projected winter peak demands. Similar to the summer assessment, the winter assessment shall identify reliability issues of interest and regional and subregional areas of concern in meeting projected customer demands and may also include possible mitigation alternatives. The winter assessment report will generally be published in mid-November for the upcoming winter period.
4. **Special Reliability Assessment Reports** — In addition to the long-term and seasonal reliability assessment reports, NERC shall also conduct special reliability assessments on a regional, interregional, and Interconnection basis as conditions warrant, or as requested by the Board or governmental authorities. The teams of reliability and technical experts also may initiate special assessments of key

reliability issues and their impacts on the reliability of a regions, subregions, or Interconnection (or a portion thereof). Such special reliability assessments may include, among other things, operational reliability assessments, evaluations of emergency response preparedness, adequacy of fuel supply, hydro conditions, reliability impacts of new or proposed environmental rules and regulations, and reliability impacts of new or proposed legislation that affects or has the potential to affect the reliability of the interconnected Bulk Power Systems in North America.

804. Reliability Assessment Data and Information Requirements

To carry out the reviews and assessments of the overall reliability of the interconnected Bulk Power Systems, the Regional Entities and other entities shall provide sufficient data and other information requested by NERC in support of the annual long-term and seasonal assessments and any special reliability assessments.

Some of the data provided for these reviews and assessment may be considered confidential from a competitive marketing perspective, a Critical Energy Infrastructure Information perspective, or for other purposes. Such data shall be treated in accordance with the provisions of Section 1500 – Confidential Information.

While the major sources of data and information for this program are the Regional Entities, a team of reliability and technical experts is responsible for developing and formulating its own independent conclusions about the near-term and long-term reliability of the Bulk Power Systems.

In connection with the reliability assessment reports, requests shall be submitted to each of the Regional Entities for required reliability assessment data and other information, and for each Regional Entity’s self-assessment report. The timing of the requests will be governed by the schedule for the preparation of the assessment reports.

The Regional Entity self-assessments are to be conducted in compliance with NERC Reliability Standards and the respective regional planning criteria. The team(s) of reliability and technical experts shall also conduct interviews with the Regional Entities as needed. The summary of the Regional Entity self-assessments that are to be included in the assessment reports shall follow the general outline identified in NERC’s request. This outline may change from time to time as key reliability issues change.

In general, the Regional Entity reliability self-assessments shall address, among other areas, the following topics: demand and Net Energy for Load; assessment of projected resource adequacy; any transmission constraints that may impact bulk transmission adequacy and plans to alleviate those constraints; any unusual operating conditions that could impact reliability for the assessment period; fuel supply adequacy; the deliverability of generation (both internal and external) to Load; and any other reliability issues in the Region and their potential impacts on the reliability of the Bulk Power Systems.

805. Reliability Assessment Process

Based on their expertise, the review of the collected data, the review of the Regional Entity self-assessment reports, and interviews with the Regional Entities, as appropriate, the teams of reliability and technical experts shall perform an independent review and assessment of the generation and transmission adequacy of each Region's existing and planned Bulk Power System. The results of the review teams shall form the basis of NERC's long-term and seasonal reliability assessment reports. The review and assessment process is briefly summarized below.

1. **Resource Adequacy Assessment** — The teams shall evaluate the regional demand and resource capacity data for completeness in the context of the overall resource capacity needs of the Region. The team shall independently evaluate the ability of the Regional Entity members to serve their obligations given the demand growth projections, the amount of existing and planned capacity, including committed and uncommitted capacity, contracted capacity, or capacity outside of the Region. If the Region relies on capacity from outside of the Region to meet its resource objectives, the ability to deliver that capacity shall be factored into the assessment. The demand and resource capacity information shall be compared to the resource adequacy requirements of the Regional Entity for the year(s) or season(s) being assessed. The assessment shall determine if the resource information submitted represents a reasonable and attainable plan for the Regional Entity and its members. For cases of inadequate capacity or reserve margin, the Regional Entity will be requested to analyze and explain any resource capacity inadequacies and its plans to mitigate the reliability impact of the potential inadequacies. The analysis may be expanded to include surrounding areas. If the expanded analysis indicates further inadequacies, then an interregional problem may exist and will be explored with the applicable Regions. The results of these analyses shall be described in the assessment report.
2. **Transmission Adequacy and Operating Reliability Assessment** — The teams shall evaluate transmission system information that relates to the adequacy and operating reliability of the regional transmission system. That information shall include: regional planning study reports, interregional planning study reports, and/or regional operational study reports. If additional information is required, another data request shall be sent to the Regional Entity. The assessment shall provide a judgment on the ability of the regional transmission system to operate reliably under the expected range of operating conditions over the assessment period as required by NERC Reliability Standards. If sub-areas of the regional system are especially critical to the Reliable Operation of the regional bulk transmission system, these Facilities or sub-areas shall be reviewed and addressed in the assessment. Any areas of concern related to the adequacy or operating reliability of the system shall be identified and reported in the assessment.
3. **Seasonal Operating Reliability Assessment** — The team(s) shall evaluate the overall operating reliability of the regional bulk transmission systems. In areas with potential resource adequacy or system operating reliability problems, operational readiness of the affected Regional Entities for the upcoming season

shall be reviewed and analyzed. The assessment may consider unusual but possible operating scenarios and how the system is expected to perform. Operating reliability shall take into account a wide range of activities, all of which should reinforce the Regional Entity's ability to deal with the situations that might occur during the upcoming season. Typical activities in the assessment may include: facility modifications and additions, new or modified operating procedures, emergency procedures enhancement, and planning and operating studies. The teams shall report the overall seasonal operating reliability of the regional transmission systems in the annual summer and winter assessment reports.

4. **Reporting of Reliability Assessment Results** — The teams of reliability and technical experts shall provide an independent assessment of the reliability of the Regional Entities and the North American interconnected Bulk Power System for the period of the assessment. While the Regional Entities are relied upon to provide the information to perform such assessments, the review team is not required to accept the conclusions provided by the Regional Entities. Instead, the review team is expected, based on their expertise, to reach their own independent conclusions about the status of the adequacy of the generation and bulk power transmission systems of North America.

The review team also shall strive to achieve consensus in their assessments. The assessments that are made are based on the best information available at the time. However, since judgment is applied to this information, legitimate differences of opinion can develop. Despite these differences, the review team shall work to achieve consensus on their findings.

In addition to providing long-term and seasonal assessments in connection with the Reliability Assessment Program, the review team of experts shall also be responsible for recommending new and revised Reliability Standards related to the reliability assessments and the reliability of the Bulk Power Systems. These proposals for new or revised Reliability Standards shall be entered into NERC's Reliability Standards development process.

Upon completion of the assessment, the team shall share the results with the Regional Entities. The Regional Entities shall be given the opportunity to review and comment on the conclusions in the assessment and to provide additional information as appropriate. The reliability assessments and their conclusions are the responsibility of NERC's technical review team and NERC.

The preparation and approval of NERC's reliability assessment reports shall follow a prescribed schedule including review, comment, and possible approval by appropriate NERC committees. The long-term and seasonal (summer and winter) reliability assessment reports shall be further reviewed for approval by the Board for publication to the electric industry.

806. Scope of the Reliability Performance and Analysis Program

The components of the program will include analysis of large-scale outages, disturbances, and near misses to determine root causes and lessons learned; identification and continuous monitoring of performance indices to detect emerging trends and signs of a decline in reliability performance; and communications of performance results, trends, recommendations, and initiatives to those responsible to take actions; followed with confirmation of actions to correct any deficiencies identified. Within NERC, the reliability performance program will provide performance results to the Reliability Standards Development and Compliance Monitoring and Enforcement Programs to make the necessary adjustments to preserve reliability based on a risk-based approach.

807. Analysis of Major Events

Responding to major events affecting the Bulk Power System such as significant losses of Load or generation, blackouts and other significant Bulk Power System disturbances, or other emergencies on the Bulk Power System, can be divided into four phases: situational assessment and communications; situation tracking and communications; data collection, investigation, analysis, and reporting; and follow-up on recommendations.

- a. 1. NERC's role following a major event blackout or other major Bulk Power System disturbance or emergency is to provide leadership, coordination, technical expertise, and assistance to the industry in responding to the major event. Working closely with the Regional Entities and Reliability Coordinators, and other appropriate Registered Entities, NERC will coordinate and facilitate efforts among industry participants, and with state, federal, and provincial governments in the United States and Canada to support the industry's response.
- b. 2. When responding to any major event where physical or cyber security is suspected as a cause or contributing factor to the major event, NERC will immediately notify appropriate government agencies and coordinate its activities with them.
- c. 3. To the extent that a Reliability Standard sets forth specific criteria and procedures for reporting the Bulk Power System disturbances and events described in that Reliability Standard, all Registered Entities that are subject to the Requirements of that Reliability Standard must report the information required by that Reliability Standard within the time periods specified. In addition to reporting information as required by applicable Reliability Standards, Each user, owner, and operator of the Bulk Power System shall also provide NERC and the applicable Regional Entities with such additional information requested by NERC or the applicable Regional Entity as is necessary to enable NERC and the applicable Regional Entities to carry out their responsibilities under this section.
- d. 4. During the conduct of some NERC analyses, assistance may be needed from government agencies. This assistance could include: authority to require data reporting from affected or involved parties; communications with other agencies of government; investigations related to possible criminal or terrorist involvement in the major event; resources for initial data gathering immediately

after the major event; authority to call meetings of affected or involved parties; and technical and analytical resources for studies.

- e. 5. NERC shall work with all other participants to establish a clear delineation of roles, responsibilities, and coordination requirements among industry and government for the investigation and reporting of findings, conclusions, and recommendations related to major ~~events, blackouts, disturbances, or other emergencies affecting the Bulk Power System~~ with the objective of avoiding, to the extent possible, multiple investigations of the same major event. If the major event is confined to a single Regional Entity, NERC representatives will participate as members of the Regional Entity analysis team. NERC will establish, maintain, and revise from time to time as appropriate based on experience, a manual setting forth procedures and protocols for communications and sharing and exchange of information between and among NERC, the affected Regional Entity or Entities, and relevant governmental authorities, industry organizations and Bulk Power System user, owners, and operators concerning the investigation and analysis of major events.
- f. 6. NERC and applicable entity(s) ~~shall~~will apply, as appropriate to the circumstances of the major event, the NERC *Blackout and Disturbance Response Procedures*, which are incorporated into these Rules of Procedure as **Appendix 8**. These procedures provide a framework to guide NERC's response to major events that may have multiregional, national, or international implications. Experienced industry leadership shall be applied to tailor the response to the specific circumstances of the major event. In accordance with ~~that~~those procedures, the NERC president will determine whether the major event warrants analysis at the ~~NERC level~~NERC level. A Regional Entity may request that NERC elevate any analysis of a major event to the NERC level.
- g. 7. NERC will screen and analyze the findings and recommendations from the analysis, and those with generic applicability will be disseminated to the industry through various means appropriate to the circumstances, including in accordance with Section 810.

808. Analysis of Off-Normal OccurrencesEvents, Potential Bulk Power System Performance Vulnerabilities, and Bulk Power System Performance Vulnerabilities

- 1. NERC and Regional Entities ~~will~~shall analyze Bulk Power sSystem and equipment performance ~~occurrences~~events that do not rise to the level of a major ~~event, blackout, disturbance, or system emergency~~, as described in Section 807. NERC and Regional Entities ~~will~~shall also analyze potential vulnerabilities in the Bulk Power System that they discover or that are brought to their attention by other sources including government agencies. The purpose of these analyses is to identify the root causes of ~~events~~occurrences or conditions that may be precursors of major events or other potentially more serious ~~occurrences~~events, or that have the potential to cause major events or other more serious ~~occurrences~~events, to assess past reliability performance for lessons learned, and to develop reliability performance benchmarks and trends.

2. NERC and Regional Entities will screen and analyze off-normal occurrences, Bulk Power System performance events, and potential Bulk Power System vulnerabilities for significance, and information from those indicated as having with generic applicability will be disseminated to the industry through various means appropriate to the circumstances, including in accordance with Section 810.
3. To the extent that a Reliability Standard sets forth specific criteria and procedures for reporting the Bulk Power System disturbances and events described in that Reliability Standard, all Registered Entities that are subject to the Requirements of that Reliability Standard must report the information required by that Reliability Standard within the time periods specified. In addition to reporting information as required by applicable Reliability Standards, Each user, owner, and operator, of the Bulk Power System shall provide NERC and the applicable Regional Entities with such additional information requested by NERC or the applicable Regional Entities as is necessary to enable NERC and the applicable Regional Entities to carry out their responsibilities under this section.

809. Reliability Benchmarking

NERC shall identify and track key reliability indicators as a means of benchmarking reliability performance and measuring reliability improvements. This program will include assessing available metrics, developing guidelines for acceptable metrics, maintaining a performance metrics “dashboard” on the NERC website, and developing appropriate reliability performance benchmarks.

810. Information Exchange and Issuance of NERC Advisories, Recommendations and Essential Actions

1. Members of NERC and Bulk Power System owners, operators, and users shall provide NERC with detailed and timely operating experience information and data.
2. In the normal course of operations, NERC disseminates the results of its events analysis findings, lessons learned and other analysis and information gathering to the industry. These findings, lessons learned and other information will be used to guide the Reliability Assessment Program.
3. When NERC determines it is necessary to place the industry or segments of the industry on formal notice of its findings, analyses, and recommendations, NERC will provide such notification in the form of specific operations or equipment Advisories, Recommendations or Essential Actions:
 - 3.1 Level 1 (Advisories) – purely informational, intended to advise certain segments of the owners, operators and users of the Bulk Power System of findings and lessons learned;
 - 3.2 Level 2 (Recommendations) – specific actions that NERC is recommending be considered on a particular topic by certain segments of

owners, operators, and users of the Bulk Power System according to each entity's facts and circumstances;

- 3.3 Level 3 (Essential Actions) – specific actions that NERC has determined are essential for certain segments of owners, operators, or users of the Bulk Power System to take to ensure the reliability of the Bulk Power System. Such Essential Actions require NERC Board approval before issuance.
4. The Bulk Power System owners, operators, and users to which Level 2 (Recommendations) and Level 3 (Essential Actions) notifications apply are to evaluate and take appropriate action on such issuances by NERC. Such Bulk Power System owners, operators, and users shall also provide reports of actions taken and timely updates on progress towards resolving the issues raised in the Recommendations and Essential Actions in accordance with the reporting date(s) specified by NERC.
5. NERC will advise the Commission and other Applicable Governmental Authorities of its intent to issue all Level 1 (Advisories), Level 2 (Recommendations), and Level 3 (Essential Actions) at least five (5) business days prior to issuance, unless extraordinary circumstances exist that warrant issuance less than five (5) business days after such advice. NERC will file a report with the Commission and other Applicable Governmental Authorities no later than thirty (30) days following the date by which NERC has requested the Bulk Power System owners, operators, and users to which a Level 2 (Recommendation) or Level 3 (Essential Action) issuance applies to provide reports of actions taken in response to the notification. NERC's report to the Commission and other Applicable Governmental Authorities will describe the actions taken by the relevant owners, operators, and users of the Bulk Power System and the success of such actions taken in correcting any vulnerability or deficiency that was the subject of the notification, with appropriate protection for Confidential Information or Critical Energy Infrastructure Information.

811. Equipment Performance Data

Through its Generating Availability Data System (GADS), NERC shall collect operating information about the performance of electric generating equipment; provide assistance to those researching information on power plant outages stored in its database; and support equipment reliability as well as availability analyses and other decision-making processes developed by GADS subscribers. GADS data is also used in conducting assessments of generation resource adequacy.

SECTION 900 — TRAINING AND EDUCATION

901. Scope of the Training and Education Program

Maintaining the reliability of the Bulk Electric System through implementation of the Reliability Standards requires informed and trained personnel. The training and education program will provide the education and training necessary for Bulk Power System personnel and regulators to obtain the essential knowledge necessary to understand and operate the Bulk Electric System.

NERC shall develop and maintain training and education programs for the purpose of establishing training requirements, developing materials, and developing training activities. The target audience of the training and education programs shall be Bulk Power System operating personnel including system operations personnel, operations support personnel (engineering and information technology), supervisors and managers, training personnel, and other personnel directly responsible for complying with NERC Reliability Standards who, through their actions or inactions, may impact the real-time, or day-ahead reliability of the Bulk Power System.

NERC shall also develop and provide appropriate training and education for industry participants and regulators affected by new or changed Reliability Standards or compliance Requirements.

To accomplish those objectives:

1. NERC shall periodically conduct job task analyses for targeted Bulk Power System personnel to ensure that the training program content is properly aligned to the job tasks performed by those personnel.
2. NERC shall develop and maintain personnel training program curriculum requirements based on valid job-task analysis.
3. NERC shall periodically conduct performance surveys to determine the effectiveness of the training program and identify areas for further training development and improvement.
4. NERC shall develop training and education materials and activities to assist Bulk Power System entities implementing new or revised Reliability Standard Requirements or other NERC-related changes.
5. NERC shall develop and provide training to people who participate in NERC and Regional Entity evaluations, audits, and investigations for the Compliance Monitoring and Enforcement Program, Organization Certification Program, and the continuing education program.

902. Continuing Education Program

NERC shall develop and maintain a continuing education program to foster the improvement of training and to promote quality in the training programs used by and

implemented by Bulk Power System entities. The program shall approve or accredit those activities and entities meeting NERC continuing education requirements.

1. NERC shall develop and implement continuing education program requirements that promote excellence in training programs and advance improved performance for Bulk Power System personnel identified in Section 901.
2. NERC shall develop and maintain a process to approve or accredit continuing education Providers and activities seeking approval or accreditation and meeting NERC-approved continuing education requirements.
3. NERC shall perform periodic audits on continuing education Providers and training activities to ensure that the approved or accredited Providers and training activities satisfy NERC continuing education requirements.
4. NERC shall develop and maintain an appeals process for disputed application reviews, interpretations of guidelines and standards, probation or suspension of NERC-approved Provider status, or Continuing Education Hour disputes.

SECTION 1000 — SITUATION AWARENESS AND INFRASTRUCTURE SECURITY

1001. Situation Awareness

NERC shall through the use of Reliability Coordinators and available tools, monitor present conditions on the Bulk Power System and provide leadership coordination, technical expertise, and assistance to the industry in responding to events as necessary. To accomplish these goals, NERC will:

1. Maintain real-time situation awareness of conditions on the Bulk Power System;
2. Notify the industry of significant Bulk Power System events that have occurred in one area, and which have the potential to impact reliability in other areas;
3. Maintain and strengthen high-level communication, coordination, and cooperation with governments and government agencies regarding real-time conditions; and
4. Enable the Reliable Operation of interconnected Bulk Power Systems by facilitating information exchange and coordination among reliability service organizations.

1002. Reliability Support Services

NERC ~~will provide~~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. ~~NERC will work with the 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 including the Area Control Error (ACE) and Frequency Monitoring System, NERC Hotline, Real-time Flows, System Data Exchange (SDX), Reliability Coordinator Information System (RCIS), Transmission Services Information Network (TSIN), Interchange Distribution Calculator (IDC), Interregional Security Network (ISN), and Central Repository for Security Events (CRC).~~ To accomplish this goal, NERC will:

1. ~~Maintain~~Collaborate with industry to determine the ~~reliability and effectiveness~~necessity of ~~all mission-critical operating reliability support systems and new tools or services~~ to enhance reliability;
2. For those tools that the collaborative process determines should proceed to a development phase, provide a start-up mechanism and development system~~Continue to support maintenance of a transmission provider curtailment report on the CRC site in response to Federal Energy Regulatory Commission Order 605;~~
3. Implement the tool either on its own or through an appropriate group or organization~~Investigate and analyze the use of high-speed real-time system~~

~~measurements, including phasors, in predicting the behavior and performance of the Eastern Interconnection; and~~

- ~~4. Where NERC conducts the implementation phase of a new tool or service, develop a transition plan to turn maintenance and provision of the tool or service over to an organization identified in the development stage. Facilitate real-time voice and data exchange services among Reliability Coordinators (e.g., Hotline, Interregional Security Network, NERCnet, System Data Exchange, etc.).~~

In addition to tools developed as a result of a collaborative process with industry, NERC may develop reliability tools on its own, but will consult with industry concerning the need for the tool prior to proceeding 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.

1003. Infrastructure Security Program

NERC shall coordinate electric industry activities to promote Critical Infrastructure protection of the Bulk Power System in North America by taking a leadership role in Critical Infrastructure protection of the electricity sector so as to reduce vulnerability and improve mitigation and protection of the electricity sector's Critical Infrastructure. To accomplish these goals, NERC shall perform the following functions.

1. Electric Sector Information Sharing and Analysis Center (ESISAC)
 - 1.1 NERC shall serve as the electricity sector's sector coordinator and operate its Information Sharing and Analysis Center to gather information and communicate security-related threats and incidents within the sector, with United States and Canadian government agencies, and with other Critical Infrastructure sectors.
 - 1.2 NERC shall improve the capability of the ESISAC to analyze security threats and incident information and provide situational assessments for the electricity sector and governments.
 - 1.3 NERC shall work closely with the United States Department of Homeland Security, Department of Energy, Natural Resources Canada, and Public Safety and Emergency Preparedness Canada.
 - 1.4 NERC shall strengthen and expand these functions and working relationships with the electricity sector, other Critical Infrastructure industries, governments, and government agencies throughout North America to ensure the protection of the infrastructure of the Bulk Power System.

- 1.5 NERC shall fill the role of the Electricity Sector Coordinating Council and coordinate with the Government Coordinating Council.
 - 1.6 NERC shall coordinate with other Critical Infrastructure sectors through active participation with the other Sector Coordinating Councils, the other ISACs, and the National Infrastructure Advisory Committee.
 - 1.7 NERC shall encourage and participate in coordinated Critical Infrastructure protection exercises, including interdependencies with other Critical Infrastructure sectors.
2. Security Planning
- 2.1 NERC shall take a risk management approach to Critical Infrastructure protection, considering probability and severity, and recognizing that mitigation and recovery can be practical alternatives to prevention.
 - 2.2 NERC shall keep abreast of the changing threat environment through collaboration with government agencies.
 - 2.3 NERC shall develop criteria to identify critical physical assets and Critical Cyber Assets, assess security threats, identify risk assessment methodologies, and assess effectiveness of physical and cyber protection measures.
 - 2.4 NERC shall enhance and maintain the Bulk Power System critical spare transformer program, encourage increased participation by asset owners, and continue to assess the need to expand this program to include other critical Bulk Power System equipment.
 - 2.5 NERC shall support implementation of the Critical Infrastructure Protection Standards through education and outreach.
 - 2.6 NERC shall review and improve existing security guidelines, develop new security guidelines to meet the needs of the electricity sector, and consider whether any guidelines should be developed into Reliability Standards.
 - 2.7 NERC shall conduct education and outreach initiatives to increase awareness and respond to the needs of the electricity sector.
 - 2.8 NERC shall strengthen relationships with federal, state, and provincial government agencies on Critical Infrastructure protection matters.
 - 2.9 NERC shall maintain and improve mechanisms for the sharing of sensitive or classified information with federal, state, and provincial government agencies on Critical Infrastructure protection matters; work with DOE and DHS to implement the National Infrastructure Protection Plan, as applicable to the electricity sector; and coordinate this work with PSEPC.

- 2.10 NERC shall improve methods to better assess the impact of a possible physical attack on the Bulk Power System and means to deter, mitigate, and respond following an attack.
- 2.11 NERC shall assess the results of vulnerability assessments and enhance the security of system control and data acquisition (SCADA) and process control systems by developing methods to detect an emerging cyber attack and the means to mitigate impacts on the Bulk Power Systems.
- 2.12 NERC shall work with the National SCADA Test Bed and the Process Control Systems Forum to accelerate the development of technology that will enhance the security, safety, and reliability of process control and SCADA systems.

SECTION 1100 — ANNUAL NERC BUSINESS PLANS AND BUDGETS

1101. Scope of Business Plans and Budgets

The Board shall determine the content of the budgets to be submitted to the Applicable Governmental Authorities with consultation from the members of the Member Representatives Committee, Regional Entities, and others in accordance with the Bylaws. The Board shall identify any activities outside the scope of NERC's statutory reliability functions, if any, and the appropriate funding mechanisms for those activities.

1102. NERC Funding and Cost Allocation

1. In order that NERC's costs shall be fairly allocated among Interconnections and among Regional Entities, the NERC funding mechanism for all statutory functions shall be based on Net Energy for Load (NEL).
2. NERC's costs shall be allocated so that all Load (or, in the case of costs for an Interconnection or Regional Entity, all Load within that Interconnection or Regional Entity) bears an equitable share of such costs based on NEL.
3. Costs shall be equitably allocated between countries or Regional Entities thereof for which NERC has been designated or recognized as the Electric Reliability Organization.
4. Costs incurred to accomplish the statutory functions for one Interconnection, Regional Entity, or group of entities will be directly assigned to that Interconnection, Regional Entity, or group of entities provided that such costs are allocated equitably to end-users based on Net Energy for Load.

1103. NERC Budget Development

1. The NERC annual budget process shall be scheduled and conducted for each calendar year so as to allow a sufficient amount of time for NERC to receive Member inputs, develop the budget, and receive Board and, where authorized by applicable legislation or agreement, Applicable Governmental Authority approval of the NERC budget for the following fiscal year, including timely submission of the proposed budget to FERC for approval in accordance with FERC regulations.
2. The NERC budget submittal to Applicable Governmental Authorities shall include provisions for all ERO functions, all Regional Entity delegated functions as specified in delegation agreements and reasonable reserves and contingencies.
3. The NERC annual budget submittal to Applicable Governmental Authorities shall include description and explanation of NERC's proposed ERO program activities for the year; budget component justification based on statutory or other authorities; explanation of how each budgeted activity lends itself to the accomplishment of the statutory or other authorities; sufficiency of resources

provided for in the budget to carry out the ERO program responsibilities; explanation of the calculations and budget estimates; identification and explanation of changes in budget components from the previous year's budget; information on staffing and organization charts; and such other information as is required by FERC and other Applicable Governmental Authorities having authority to approve the proposed budget.

4. NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, to allow a meaningful comparison of actual results at the NERC and Regional Entity level by the Applicable Governmental Authorities.

1104. Submittal of Regional Entity Budgets to NERC

1. Each Regional Entity shall submit its proposed annual budget for carrying out its delegated authority functions as well as all other activities and funding to NERC in accordance with a schedule developed by NERC and the Regional Entities, which shall provide for the Regional Entity to submit its final budget that has been approved by its board of directors or other governing body no later than July 1 of the prior year, in order to provide sufficient time for NERC's review and comment on the proposed budget and approval of the Regional Entity budget by the NERC Board of Trustees in time for the NERC and Regional Entity budgets to be submitted to FERC and other Applicable Governmental Authorities for approval in accordance with their regulations. The Regional Entity's budget shall include supporting materials in accordance with the budget and reporting format developed by NERC and the Regional Entities, including the Regional Entity's complete business plan and organization chart, explaining the proposed collection of all dues, fees, and charges and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures.
2. NERC shall review and approve each Regional Entity's budget for meeting the requirements of its delegated authority. Concurrent with approving the NERC budget, NERC shall review and approve, or reject, each Regional Entity budget for filing.
3. NERC shall also have the right to review from time to time, in reasonable intervals but no less frequently than every three years, the financial books and records of each Regional Entity having delegated authority in order to ensure that the documentation fairly represents in all material aspects appropriate funding of delegated functions.

1105. Submittal of NERC and Regional Entity Budgets to Governmental Authorities for Approval

1. NERC shall file for approval by the Applicable Governmental Authorities at least 130 days in advance of the start of each fiscal year. The filing shall include: (1) the complete NERC and Regional Entity budgets including the business plans and organizational charts approved by the Board, (2) NERC's annual funding requirement (including Regional Entity costs for delegated functions), and (3) the

mechanism for assessing charges to recover that annual funding requirement, together with supporting materials in sufficient detail to support the requested funding requirement.

2. NERC shall seek approval from each Applicable Governmental Authority requiring such approval for the funding requirements necessary to perform ERO activities within their jurisdictions.

1106. NERC and Regional Entity Billing and Collections

1. NERC shall request the Regional Entities to identify all Load-Serving Entities³ within each Regional Entity and the NEL assigned to each Load-Serving Entity, and the Regional Entities shall supply the requested information. The assignment of a funding requirement to an entity shall not be the basis for determining that the entity must be registered in the Compliance Registry.
2. NERC shall accumulate the NEL by Load-Serving Entities for each Applicable Governmental Authority and submit the proportional share of NERC funding requirements to each Applicable Governmental Authority for approval together with supporting materials in sufficient detail to support the requested funding requirement.
3. NEL reported by Balancing Authorities within a Region shall be used to rationalize and validate amounts allocated for collection through Regional Entity processes.
4. The billing and collection processes shall provide:
 - 4.1 A clear validation of billing and application of payments.
 - 4.2 A minimum of data requests to those being billed.
 - 4.3 Adequate controls to ensure integrity in the billing determinants including identification of entities responsible for funding NERC's activities.
 - 4.4 Consistent billing and collection terms.
5. NERC will bill and collect all budget requirements approved by Applicable Governmental Authorities (including the funds required to support those functions assigned to the Regional Entities through the delegation agreements) directly from the Load-Serving Entities or their designees or as directed by particular Applicable Governmental Authorities, except where the Regional Entity is required to collect the budget requirements for NERC, in which case the Regional Entity will collect directly from the Load-Serving Entities or as otherwise

³ A Regional Entity may allocate funding obligations using an alternative method approved by NERC and by FERC and other Applicable Governmental Authorities, as provided for in the regional delegation agreement.

provided by agreement and submit funds to NERC. Alternatively, a load-serving entity may pay its allocated ERO costs through a Regional Entity managed collection mechanism.

6. NERC shall set a minimum threshold limit on the billing of small LSEs to minimize the administrative burden of collection.
7. NERC shall pursue any non-payments and shall request assistance from Applicable Governmental Authorities as necessary to secure collection.
8. In the case where a Regional Entity performs the collection for ERO, the Regional Entity will not be responsible for non-payment in the event that a user, owner or operator of the Bulk Power System does not pay its share of dues, fees and charges in a timely manner, provided that such a Regional Entity shall use reasonably diligent efforts to collect dues, fees, and other charges from all entities obligated to pay them. However, any revenues not paid shall be recovered from others within the same Region to avoid cross-subsidization between Regions.
9. Both NERC and the Regional Entities also may bill members or others for functions and services not within statutory requirements or otherwise authorized by the Applicable Governmental Authorities. Costs and revenues associated with these functions and services shall be separately identified and not commingled with billings associated with the funding of NERC or of the Regional Entities for delegated activities.

1107. Penalty Applications

1. Where NERC or a Regional Entity initiates a compliance monitoring and enforcement process that leads to imposition of a Penalty, the entity that initiated the process shall receive any Penalty monies imposed and collected as a result of that process, unless a different disposition of the Penalty monies is provided for in the delegation agreement, or in a contract or a disposition of the violation that is approved by NERC and FERC.
2. All funds from financial Penalties assessed in the United States received by the entity initiating the compliance monitoring and enforcement process shall be applied as a general offset to the entity's budget requirements for the subsequent fiscal year, if received by July 1, or for the second subsequent fiscal year, if received on or after July 1. Funds from financial Penalties shall not be directly applied to any program maintained by the entity conducting the compliance monitoring and enforcement process. Funds from financial Penalties assessed against a Canadian entity shall be applied as specified by legislation or agreement.
3. In the event that a compliance monitoring and enforcement process is conducted jointly by NERC and a Regional Entity, the Regional Entity shall receive the Penalty monies and offset the Regional Entity's budget requirements for the subsequent fiscal year.

4. Exceptions or alternatives to the foregoing provisions will be allowed if approved by NERC and by FERC or any other Applicable Governmental Authority.

1108. Special Assessments

On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next funding cycle, NERC shall file with the Applicable Governmental Authorities, where authorized by applicable legislation or agreement, for authorization for an amended or supplemental budget for NERC or a Regional Entity and, if necessary under the amended or supplemental budget, to collect a special or additional assessment for statutory functions of NERC or the Regional Entity. Such filing shall include supporting materials to justify the requested funding, including any departure from the approved funding formula or method.

SECTION 1200 — REGIONAL DELEGATION AGREEMENTS

1201. Pro Forma Regional Delegation Agreement

NERC shall develop and maintain a pro forma Regional Entity delegation agreement, which shall serve as the basis for negotiation of consistent agreements for the delegation of ERO functions to Regional Entities.

1202. Regional Entity Essential Requirements

NERC shall establish the essential requirements for an entity to become qualified and maintain good standing as a Regional Entity.

1203. Negotiation of Regional Delegation Agreements

NERC shall, for all areas of North America that have provided NERC with the appropriate authority, negotiate regional delegation agreements for the purpose of ensuring all areas of the North American Bulk Power Systems are within a Regional Entity Region. In the event NERC is unable to reach agreement with Regional Entities for all areas, NERC shall provide alternative means and resources for implementing NERC functions within those areas. No delegation agreement shall take effect until it has been approved by the Applicable Governmental Authority.

1204. Conformance to Rules and Terms of Regional Delegation Agreements

NERC and each Regional Entity shall comply with all applicable ERO Rules of Procedure and the obligations stated in the regional delegation agreement.

1205. Sub-delegation

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

1206. Nonconformance to Rules or Terms of Regional Delegation Agreement

If a Regional Entity is unable to comply or is not in compliance with an ERO Rule of Procedure or the terms of the regional delegation agreement, the Regional Entity shall immediately notify NERC in writing, describing the area of nonconformance and the reason for not being able to conform to the Rule of Procedure. NERC shall evaluate each case and inform the affected Regional Entity of the results of the evaluation. If NERC determines that a Rule of Procedure or term of the regional delegation agreement has been violated by a Regional Entity or cannot practically be implemented by a Regional Entity, NERC shall notify the Applicable Governmental Authorities and take any actions necessary to address the situation.

1207. Regional Entity Audits

Approximately every five years and more frequently if necessary for cause, NERC shall audit each Regional Entity to verify that the Regional Entity continues to comply with NERC Rules of Procedure and the obligations of NERC delegation agreement. Audits of Regional Entities shall be conducted, to the extent practical, based on professional auditing standards recognized in the U.S., including Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards, and standards sanctioned by the Institute of Internal Auditors, and if applicable to the coverage of the audit, may be based on Canadian or other international standards. The audits required by this Section 1207 shall not duplicate the audits of Regional Entity Compliance Monitoring and Enforcement Programs provided for in **Appendix 4A**, Audit of Regional Compliance Programs, to these Rules of Procedure.

1208. Process for Considering Registered Entity Requests to Transfer to Another Regional Entity

1. A Registered Entity that is registered in the Region of one Regional Entity and believes its registration should be transferred to a different Regional Entity may submit a written request to both Regional Entities requesting that they process the proposed transfer in accordance with this section. The Registered Entity's written request shall set forth the reasons the Registered Entity believes justify the proposed transfer and shall describe any impacts of the proposed transfer on other Bulk Power System owners, operators, and users.
2. After receiving the Registered Entity's written request, the two Regional Entities shall consult with each other as to whether they agree or disagree that the requested transfer is appropriate. The Regional Entities may also consult with affected Reliability Coordinators, Balancing Authorities and Transmission Operators as appropriate. Each Regional Entity shall post the request on its website for public comment period of 21 days. In evaluating the proposed transfer, the Regional Entities shall consider the location of the Registered Entity's Bulk Power System facilities in relation to the geographic and electrical boundaries of the respective Regions; the impacts of the proposed transfer on other Bulk Power System owners, operators; and users, the impacts of the proposed transfer on the current and future staffing, resources, budgets and assessments to other Load-Serving Entities of each Regional Entity, including the sufficiency of the proposed transferee Regional Entity's staffing and resources to perform compliance monitoring and enforcement activities with respect to the Registered Entity; the Registered Entity's compliance history with its current Regional Entity; and the manner in which pending compliance monitoring and enforcement matters concerning the Registered Entity would be transitioned from the current Regional Entity to the transferee Regional Entity; along with any other reasons for the proposed transfer stated by the Registered Entity and any other reasons either Regional Entity considers relevant. The Regional Entities may

request that the Registered Entity provide additional data and information concerning the proposed transfer for the Regional Entities' use in their evaluation. The Registered Entity's current Regional Entity shall notify the Registered Entity in writing as to whether (i) the two Regional Entities agree that the requested transfer is appropriate, (ii) the two Regional Entities agree that the requested transfer is not appropriate and should not be processed further, or (iii) the two Regional Entities disagree as to whether the proposed transfer is appropriate.

3. If the two Regional Entities agree that the requested transfer is appropriate, they shall submit a joint written request to NERC requesting that the proposed transfer be approved and that the delegation agreement between NERC and each of the Regional Entities be amended accordingly. The Regional Entities' joint written submission to NERC shall describe the reasons for the proposed transfer; the location of the Registered Entity's Bulk Power System Facilities in relation to the geographic and electrical boundaries of the respective Regions; the impacts of the proposed transfer on other Bulk Power System owners, operators, and users; the impacts of the proposed transfer on the current and future staffing, resources, budgets and assessments of each Regional Entity, including the sufficiency of the proposed transferee Regional Entity's staffing and resources to perform compliance monitoring and enforcement activities with respect to the Registered Entity; the Registered Entity's compliance history with its current Regional Entity; and the manner in which pending compliance monitoring and enforcement matters concerning the Registered Entity will be transitioned from the current Regional Entity to the transferee Regional Entity. The NERC Board of Trustees shall consider the proposed transfer based on the submissions of the Regional Entities and any other information the Board considers relevant, and shall approve or disapprove the proposed transfer and the related delegation agreement amendments. The NERC Board may request that the Regional Entities provide additional information, or obtain additional information from the Registered Entity, for the use of the NERC Board in making its decision. If the NERC Board approves the proposed transfer, NERC shall file the related delegation agreements with FERC for approval.
4. If the two Regional Entities do not agree with each other that the proposed transfer is appropriate, the Regional Entity supporting the proposed transfer shall, if requested by the Registered Entity, submit a written request to NERC to approve the transfer and the related delegation agreement amendments. The Regional Entity's written request shall include the information specified in Section 1208.3. The Regional Entity that does not believe the proposed transfer is appropriate will be allowed to submit a written statement to NERC explaining why the Regional Entity believes the transfer is not appropriate and should not be approved. The NERC Board of Trustees shall consider the proposed transfer based on the submissions of the Regional Entities and any other information the Board considers relevant, and shall approve or disapprove the proposed transfer and the related delegation agreement amendments. The NERC Board may request that the Regional Entities provide additional information, or obtain additional

information from the Registered Entity, for the use of the NERC Board in making its decision. If the NERC Board approves the proposed transfer, NERC shall file the related delegation agreements with FERC for approval.

5. Prior to action by the NERC Board of Trustees on a proposed transfer of registration under Section 1208.3 or 1208.4, NERC shall post information concerning the proposed transfer, including the submissions from the Regional Entities, on its website for at least twenty-one (21) days for the purpose of receiving public comment.
6. If the NERC Board of Trustees disapproves a proposed transfer presented to it pursuant to either Section 1208.3 or 1208.4, the Regional Entity or Regional Entities that believe the transfer is appropriate may, if requested to do so by the Registered Entity, file a petition with FERC pursuant to 18 C.F.R. section 39.8(f) and (g) requesting that FERC order amendments to the delegation agreements of the two Regional Entities to effectuate the proposed transfer.
7. No transfer of a Registered Entity from one Regional Entity to another Regional Entity shall be effective (i) unless approved by FERC, and (ii) any earlier than the first day of January of the second calendar year following approval by FERC, unless an earlier effective date is agreed to by both Regional Entities and NERC and approved by FERC.

SECTION 1300 — COMMITTEES

1301. Establishing Standing Committees

The Board may from time to time create standing committees. In doing so, the Board shall approve the charter of each committee and assign specific authority to each committee necessary to conduct business within that charter. Each standing committee shall work within its Board-approved charter and shall be accountable to the Board for performance of its Board-assigned responsibilities. A NERC standing committee may not delegate its assigned work to a member forum, but, in its deliberations, may request the opinions of and consider the recommendations of a member forum.

1302. Committee Membership

Each committee shall have a defined membership composition that is explained in its charter. Committee membership may be unique to each committee, and can provide for balanced decision-making by providing for representatives from each Sector or, where Sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area, by bringing together a wide diversity of opinions from industry experts with outstanding technical knowledge and experience in a particular subject area. Committee membership shall also provide the opportunity for an equitable number of members from the United States and Canada, based approximately on proportionate Net Energy for Load. All committees and other subgroups (except for those organized on other than a Sector basis because Sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area) must ensure that no two stakeholder Sectors are able to control the vote on any matter, and no single Sector is able to defeat a matter. With regard to committees and subgroups pertaining to development of, interpretation of, or compliance with Reliability Standards, NERC shall provide a reasonable opportunity for membership from Sectors desiring to participate. Committees and subgroups organized on other than a Sector basis shall be reported to the NERC Board and the Member Representatives Committee, along with the reasons for constituting the committee or subgroup in the manner chosen. In such cases and subject to reasonable restrictions necessary to accomplish the mission of such committee or subgroup, NERC shall provide a reasonable opportunity for additional participation, as members or official observers, for Sectors not represented on the committee or subgroup.

1303. Procedures for Appointing Committee Members

Committee members shall be nominated and selected in a manner that is open, inclusive, and fair. Unless otherwise stated in these Rules of Procedure or approved by the Board, all committee member appointments shall be approved by the board, and committee officers shall be appointed by the Chairman of the Board.

1304. Procedures for Conduct of Committee Business

1. Notice to the public of the dates, places, and times of meetings of all committees, and all nonconfidential material provided to committee members, shall be posted

on NERC's website at approximately the same time that notice is given to committee members. Meetings of all standing committees shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided that the meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including but not limited to personnel matters, compliance enforcement matters, litigation, or commercially sensitive or Critical Energy Infrastructure Information of any entity.

2. NERC shall maintain a set of procedures, approved by the Board, to guide the conduct of business by standing committees.

1305. Committee Subgroups

Standing committees may appoint subgroups using the same principles as in Section 1302.

SECTION 1400 — AMENDMENTS TO THE NERC RULES OF PROCEDURE

1401. Proposals for Amendment or Repeal of Rules of Procedure

In accordance with the Bylaws of NERC, requests to amend or repeal the Rules of Procedure may be submitted by (1) any ~~ten~~^{fifty} Members of NERC, which number shall include Members from at least three membership Sectors, (2) the Member Representatives Committee, (3) a ~~standing~~ committee of NERC to whose function and purpose the Rule of Procedure pertains, or (4) an officer of ~~NERC~~^{the ERO}.

1402. Approval of Amendment or Repeal of Rules of Procedure

Amendment to or repeal of Rules of Procedure shall be approved by the Board after public notice and opportunity for comment in accordance with the Bylaws of NERC. In approving changes to the Rules of Procedure, the Board shall consider the inputs of the Member Representatives Committee, other ERO committees affected by the particular changes to the Rules of Procedure, and other stakeholders as appropriate. After Board approval, the amendment or repeal shall be submitted to the Applicable Governmental Authorities for approval, where authorized by legislation or agreement. No amendment to or repeal of the Rules of Procedure shall be effective until it has been approved by the Applicable Governmental Authorities.

~~1403. Alternative Procedure for Violation Risk Factors~~

~~In the event the Reliability Standards development process fails to produce Violation Risk Factors for a particular Reliability Standard in a timely manner, the Board of Trustees may adopt Violation Risk Factors for that standard after notice and opportunity for comment. In adopting Violation Risk Factors, the Board shall consider the inputs of the Member Representatives Committee and affected stakeholders.~~

SECTION 1500 — CONFIDENTIAL INFORMATION

1501. Definitions

1. **Confidential Information** means (i) Confidential Business and Market Information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; or (vi) Cyber Security Incident Information; provided, that public information developed or acquired by an entity shall be excluded from this definition.
2. **Confidential Business and Market Information** means any information that pertains to the interests of any entity, that was developed or acquired by that entity, and that is proprietary or competitively sensitive.
3. **Critical Energy Infrastructure Information** means specific engineering, vulnerability, or detailed design information about proposed or existing Critical Infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on Critical Infrastructure; and (iii) does not simply give the location of the Critical Infrastructure.
4. **Critical Infrastructure** means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.
5. **Cyber Security Incident Information** means any information related to, describing, or which could be used to plan or cause a Cyber Security Incident.

1502. Protection of Confidential Information

1. **Identification of Confidential Information** — An owner, operator, or user of the Bulk Power System and any other party (the “Submitting Entity”) shall mark as confidential any information that it submits to NERC or a Regional Entity (the “Receiving Entity”) that it reasonably believes contains Confidential Information as defined by these Rules of Procedure, indicating the category or categories defined in Section 1501 in which the information falls. If the information is subject to a prohibition on public disclosure in the Commission-approved rules of a regional transmission organization or independent system operator or a similar prohibition in applicable federal, state, or provincial laws, the Submitting Entity shall so indicate and provide supporting references and details.
2. **Confidentiality** — Except as provided herein, a Receiving Entity shall keep in confidence and not copy, disclose, or distribute any Confidential Information or

any part thereof without the permission of the Submitting Entity, except as otherwise legally required.

3. **Information no longer Confidential** – If a Submitting Entity concludes that information for which it had sought confidential treatment no longer qualifies for that treatment, the Submitting Entity shall promptly so notify NERC or the relevant Regional Entity.

1503. Requests for Information

1. **Limitation** — A Receiving Entity shall make information available only to one with a demonstrated need for access to the information from the Receiving Entity.
2. **Form of Request** — A person with such a need may request access to information by using the following procedure:
 - 2.1 The request must be in writing and clearly marked “Request for Information.”
 - 2.2 The request must identify the individual or entity that will use the information, explain the requester’s need for access to the information, explain how the requester will use the information in furtherance of that need, and state whether the information is publicly available or available from another source or through another means. If the requester seeks access to information that is subject to a prohibition on public disclosure in the Commission-approved rules of a regional transmission organization or independent system operator or a similar prohibition in applicable federal, state, or provincial laws, the requester shall describe how it qualifies to receive such information.
 - 2.3 The request must stipulate that, if the requester does not seek public disclosure, the requester will maintain as confidential any information received for which a Submitting Party has made a claim of confidentiality in accordance with NERC’s rules. As a condition to gaining access to such information, a requester shall execute a non-disclosure agreement in a form approved by NERC’s Board of Trustees.
3. **Notice and Opportunity for Comment** — Prior to any decision to disclose information marked as confidential, the Receiving Entity shall provide written notice to the Submitting Entity and an opportunity for the Submitting Entity to either waive objection to disclosure or provide comments as to why the Confidential Information should not be disclosed. Failure to provide such comments or otherwise respond is not deemed waiver of the claim of confidentiality.
4. **Determination by ERO or Regional Entity** — Based on the information provided by the requester under Rule 1503.2, any comments provided by the Submitting Entity, and any other relevant available information, the chief

executive officer or his or her designee of the Receiving Entity shall determine whether to disclose such information.

5. **Appeal** — A person whose request for information is denied in whole or part may appeal that determination to the President of NERC (or the President’s designee) within 30 days of the determination. Appeals filed pursuant to this Section must be in writing, addressed to the President of NERC (or the President’s designee), and clearly marked “Appeal of Information Request Denial.”

NERC will provide written notice of such appeal to the Submitting Entity and an opportunity for the Submitting Entity to either waive objection to disclosure or provide comments as to why the Confidential Information should not be disclosed; provided that any such comments must be received within 30 days of the notice and any failure to provide such comments or otherwise respond is not deemed a waiver of the claim of confidentiality.

The President of NERC (or the President’s designee) will make a determination with respect to any appeal within 30 days. In unusual circumstances, this time limit may be extended by the President of NERC (or the President’s designee), who will send written notice to the requester setting forth the reasons for the extension and the date on which a determination on the appeal is expected.

6. **Disclosure of Information** — In the event the Receiving Entity, after following the procedures herein, determines to disclose information designated as Confidential Information, it shall provide the Submitting Entity no fewer than 21 days’ written notice prior to releasing the Confidential Information in order to enable such Submitting Entity to (a) seek an appropriate protective order or other remedy, (b) consult with the Receiving Entity with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. Should a Receiving Entity be required to disclose Confidential Information, or should the Submitting Entity waive objection to disclosure, the Receiving Entity shall furnish only that portion of the Confidential Information which the Receiving Entity’s counsel advises is legally required.
7. **Posting of Determinations on Requests for Disclosure of Confidential Information** — Upon making its determination on a request for disclosure of Confidential Information, NERC or the Regional Entity, as applicable, shall (i) notify the requester that the request for disclosure is granted or denied, (ii) publicly post any determination to deny the request to disclose Confidential Information, including in such posting an explanation of the reasons for the denial (but without in such explanation disclosing the Confidential Information), and (iii) publicly post any determination that information claimed by the Submitting Entity to be Confidential Information is not Confidential Information (but without in such posting disclosing any information that has been determined to be Confidential Information).

1504. Employees, Contractors and Agents

A Receiving Entity shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

1505. Provision of Information to FERC and Other Governmental Authorities

1. **Request** — A request from FERC for reliability information with respect to owners, operators, and users of the Bulk Power System within the United States is authorized by Section 215 of the Federal Power Act. Other Applicable Governmental Authorities may have similar authorizing legislation that grants a right of access to such information. Unless otherwise directed by FERC or its staff or the other Applicable Governmental Authority requesting the information, upon receiving such a request, a Receiving Entity shall provide contemporaneous notice to the applicable Submitting Entity. In its response to such a request, a Receiving Entity shall preserve any mark of confidentiality and shall notify FERC or other Applicable Governmental Authorities that the Submitting Entity has marked the information as confidential.
2. **Continued Confidentiality** — Each Receiving Entity shall continue to treat as confidential all Confidential Information that it has submitted to NERC or to FERC or another Applicable Governmental Authority, until such time as FERC or the other Applicable Governmental Authority authorizes disclosure of such information.

1506. Permitted Disclosures

1. **Confirmed Violations** — Nothing in this Section 1500 shall prohibit the disclosure of a violation at the point when the matter is filed with an Applicable Governmental Authority as a Notice of Penalty, the “violator” admits to the violation, or the alleged violator and NERC or the Regional Entity reach a settlement regarding the violation.
2. **Compliance Information** — NERC and the Regional Entities are authorized to exchange Confidential Information related to evaluations, Compliance Audits, and Compliance Investigations in furtherance of the Compliance Monitoring and Enforcement Program, on condition they continue to maintain the confidentiality of such information.

1507. Remedies for Improper Disclosure

Any person engaged in NERC or Regional Entity activity under Section 215 of the Federal Power Act or the equivalent laws of other Applicable Governmental Authorities who improperly discloses information determined to be confidential may lose access to Confidential Information on a temporary or permanent basis and may be subject to adverse personnel action, including suspension or termination. Nothing in Section 1500

precludes an entity whose information was improperly disclosed from seeking a remedy in an appropriate court.

SECTION 1600 — REQUESTS FOR DATA OR INFORMATION

1601. Scope of a NERC or Regional Entity Request for Data or Information

Within the United States, NERC and Regional Entities may request data or information that is necessary to meet their obligations under Section 215 of the Federal Power Act, as authorized by Section 39.2(d) of the Commission’s regulations, 18 C.F.R. § 39.2(d). In other jurisdictions NERC and Regional Entities may request comparable data or information, using such authority as may exist pursuant to these Rules of Procedure and as may be granted by Applicable Governmental Authorities in those other jurisdictions. The provisions of Section 1600 shall not apply to Requirements contained in any Reliability Standard to provide data or information; the Requirements in the Reliability Standards govern. The provisions of Section 1600 shall also not apply to data or information requested in connection with a compliance or enforcement action under Section 215 of the Federal Power Act, Section 400 of these Rules of Procedure, or any procedures adopted pursuant to those authorities, in which case the Rules of Procedure applicable to the production of data or information for compliance and enforcement actions shall apply.

1602. Procedure for Authorizing a NERC Request for Data or Information

1. NERC shall provide a proposed request for data or information or a proposed modification to a previously-authorized request, including the information specified in Section 1602.2.1 or 1602.2.2 as applicable, to the Commission’s Office of Electric Reliability at least twenty-one (21) days prior to initially posting the request or modification for public comment. Submission of the proposed request or modification to the Office of Electric Reliability is for the information of the Commission. NERC is not required to receive any approval from the Commission prior to posting the proposed request or modification for public comment in accordance with Section 1602.2 or issuing the request or modification to Reporting Entities following approval by the Board of Trustees.
2. NERC shall post a proposed request for data or information or a proposed modification to a previously authorized request for data or information for a forty-five (45) day public comment period.
 - 2.1. A proposed request for data or information shall contain, at a minimum, the following information: (i) a description of the data or information to be requested, how the data or information will be used, and how the availability of the data or information is necessary for NERC to meet its obligations under applicable laws and agreements; (ii) a description of how the data or information will be collected and validated; (iii) a description of the entities (by functional class and jurisdiction) that will be required to provide the data or information (“Reporting Entities”); (iv) the schedule or due date for the data or information; (v) a description of any restrictions on disseminating the data or information (e.g., “Confidential Information,” “Critical Energy Infrastructure Information,”

“aggregating” or “identity masking”); and (vi) an estimate of the relative burden imposed on the Reporting Entities to accommodate the data or information request.

- 2.2. A proposed modification to a previously authorized request for data or information shall explain (i) the nature of the modifications; (ii) an estimate of the burden imposed on the Reporting Entities to accommodate the modified data or information request, and (iii) any other items from Section 1602.2.1 that require updating as a result of the modifications.
3. After the close of the comment period, NERC shall make such revisions to the proposed request for data or information as are appropriate in light of the comments. NERC shall submit the proposed request for data or information, as revised, along with the comments received, NERC’s evaluation of the comments and recommendations, to the Board of Trustees.
4. In acting on the proposed request for data or information, the Board of Trustees may authorize NERC to issue it, modify it, or remand it for further consideration.
5. NERC may make minor changes to an authorized request for data or information without Board approval. However, if a Reporting Entity objects to NERC in writing to such changes within 21 days of issuance of the modified request, such changes shall require Board approval before they are implemented.
6. Authorization of a request for data or information shall be final unless, within thirty (30) days of the decision by the Board of Trustees, an affected party appeals the authorization under this Section 1600 to the Applicable Governmental Authority.

1603. Owners, Operators, and Users to Comply

Owners, operators, and users of the Bulk Power System registered on the NERC Compliance Registry shall comply with authorized requests for data and information. In the event a Reporting Entity within the United States fails to comply with an authorized request for data or information under Section 1600, NERC may request the Commission to exercise its enforcement authority to require the Reporting Entity to comply with the request for data or information and for other appropriate enforcement action by the Commission. NERC will make any request for the Commission to enforce a request for data or information through a non-public submission to the Commission’s enforcement staff.

1604. Requests by Regional Entity for Data or Information

1. A Regional Entity may request that NERC seek authorization for a request for data or information to be applicable within the Region of the Regional Entity, either as a freestanding request or as part of a proposed NERC request for data or information. Any such request must be consistent with this Section 1600.

2. A Regional Entity may also develop its own procedures for requesting data or information, but any such procedures must include at least the same procedural elements as are included in this Section 1600. Any such Regional Entity procedures or changes to such procedures shall be submitted to NERC for approval. Upon approving such procedures or changes thereto, NERC shall file the proposed procedures or proposed changes for approval by the Commission and any other Applicable Governmental Authorities applicable to the Regional Entity. The Regional Entity procedures or changes to such procedures shall not be effective in a jurisdiction until approved by, and in accordance with any revisions directed by, the Commission or other Applicable Governmental Authority.

1605. Confidentiality

If the approved data or information request includes a statement under Section 1602.1.1(v) that the requested data or information will be held confidential or treated as Critical Energy Infrastructure Information, then the applicable provisions of Section 1500 will apply without further action by a Submitting Entity. A Submitting Entity may designate any other data or information as Confidential Information pursuant to the provisions of Section 1500, and NERC or the Regional Entity shall treat that data or information in accordance with Section 1500. NERC or a Regional Entity may utilize additional protective procedures for handling particular requests for data or information as may be necessary under the circumstances.

1606. Expedited Procedures for Requesting Time-Sensitive Data or Information

1. In the event NERC or a Regional Entity must obtain data or information by a date or within a time period that does not permit adherence to the time periods specified in Section 1602, the procedures specified in Section 1606 may be used to obtain the data or information. Without limiting the circumstances in which the procedures in Section 1606 may be used, such circumstances include situations in which it is necessary to obtain the data or information (in order to evaluate a threat to the reliability or security of the Bulk Power System, or to comply with a directive in an order issued by the Commission or by another Applicable Governmental Authority) within a shorter time period than possible under Section 1602. The procedures specified in Section 1606 may only be used if authorized by the NERC Board of Trustees prior to activation of such procedures.
2. Prior to posting a proposed request for data or information, or a modification to a previously-authorized request, for public comment under Section 1606, NERC shall provide the proposed request or modification, including the information specified in paragraph 1602.2.1 or 1602.2.2 as applicable, to the Commission's Office of Electric Reliability. The submission to the Commission's Office of Electric Reliability shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information. The submission shall be made to the Commission's Office of Electric Reliability as far in advance, up to twenty-one (21) days, of the posting of the proposed request or modification for public comments as is

- reasonably possible under the circumstances, but in no event less than two (2) days in advance of the public posting of the proposed request or modification.
3. NERC shall post the proposed request for data or information or proposed modification to a previously-authorized request for data or information for a public comment period that is reasonable in duration given the circumstances, but in no event shorter than five (5) days. The proposed request for data or information or proposed modification to a previously-authorized request for data or information shall include the information specified in Section 1602.2.1 or 1602.2.2, as applicable, and shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information.
 4. The provisions of Sections 1602.3, 1602.4, 1602.5 and 1602.6 shall be applicable to a request for data or information or modification to a previously-authorized request for data or information developed and issued pursuant to Section 1606, except that (a) if NERC makes minor changes to an authorized request for data or information without Board approval, such changes shall require Board approval if a Reporting Entity objects to NERC in writing to such changes within five (5) days of issuance of the modified request; and (b) authorization of the request for data or information shall be final unless an affected party appeals the authorization of the request by the Board of Trustees to the Applicable Governmental Authority within five (5) days following the decision of the Board of Trustees authorizing the request, which decision shall be promptly posted on NERC's website.

SECTION 1700 — CHALLENGES TO DETERMINATIONS

1701. Scope of Authority

Section 1702 sets forth the procedures to be followed for Registered Entities to challenge determinations made by Planning Coordinators under Reliability Standard PRC-023. Section 1703 sets forth the procedures to be followed when a Submitting Entity or Owner wishes to challenge a determination by NERC to approve or to disapprove an Exception Request or to terminate an Exception under Section 509.

1702. Challenges to Determinations by Planning Coordinators Under Reliability Standard PRC-023

1. This Section 1702 establishes the procedures to be followed when a Registered Entity wishes to challenge a determination by a Planning Coordinator of the sub-200 kV circuits in its Planning Coordinator area for which Transmission Owners, Generator Owners, and Distribution Providers (defined as “Registered Entities” for purposes of this Section 1702) must comply with the requirements of Reliability Standard PRC-023.
2. Planning Coordinator Procedures
 - 2.1 Each Planning Coordinator shall establish a procedure for a Registered Entity to submit a written request for an explanation of a determination made by the Planning Coordinator under PRC-023.
 - 2.2 A Registered Entity shall follow the procedure established by the Planning Coordinator for submitting the request for explanation and must submit any such request within 60 days of receiving the determination under PRC-023 from the Planning Coordinator.
 - 2.3 Within 30 days of receiving a written request from a Registered Entity, the Planning Coordinator shall provide the Registered Entity with a written explanation of the basis for its determination under PRC-023, unless the Planning Coordinator provided a written explanation of the basis for its determination when it initially informed the Registered Entity of its determination.
3. A Registered Entity may challenge the determination of the Planning Coordinator by filing with the appropriate Regional Entity, with a copy to the Planning Coordinator, within 60 days of receiving the written explanation from the Planning Coordinator. The challenge shall include the following: (a) an explanation of the technical reasons for its disagreement with the Planning Coordinator’s determination, along with any supporting documentation, and (b) a copy of the Planning Coordinator’s written explanation. Within 30 days of receipt of a challenge, the Planning Coordinator may file a response to the Regional Entity, with a copy to the Registered Entity.

4. The filing of a challenge in good faith shall toll the time period for compliance with PRC-023 with respect to the subject facility until such time as the challenge is withdrawn, settled or resolved.
5. The Regional Entity shall issue its written decision setting forth the basis of its determination within 90 days after it receives the challenge and send copies of the decision to the Registered Entity and the Planning Coordinator. The Regional Entity may convene a meeting of the involved entities and may request additional information. The Regional Entity shall affirm the determination of the Planning Coordinator if it is supported by substantial evidence.
6. A Planning Coordinator or Registered Entity affected by the decision of the Regional Entity may, within 30 days of the decision, file an appeal with NERC, with copies to the Regional Entity and the Planning Coordinator or Registered Entity. The appeal shall state the basis of the objection to the decision of the Regional Entity and shall include the Regional Entity decision, the written explanation of the Planning Coordinator's determination under PRC-023, and the documents and reasoning filed by the Registered Entity with the Regional Entity in support of its objection. The Regional Entity, Planning Coordinator or Registered Entity may file a response to the appeal within 30 days of the appeal.
7. The ~~NERC~~ Board of Trustees shall appoint a panel to decide appeals from ~~Region~~Regional Entity decisions under Section 1702.5. The panel, which may contain alternates, shall consist of at least three appointees, one of whom must be a member of the NERC staff, who are knowledgeable about PRC-023 and transmission planning and do not have a direct financial or business interest in the outcome of the appeal. The panel shall decide the appeal within 90 days of receiving the appeal from the decision of the Regional Entity and shall affirm the determination of the Planning Coordinator if it is supported by substantial evidence.
8. The Planning Coordinator or Registered Entity affected by the decision of the panel may request that the ~~NERC~~ Board of Trustees review the decision by filing its request for review and a statement of reasons with NERC's Chief Reliability Officer within 30 days of the panel decision. The Board of Trustees may, in its discretion, decline to review the decision of the panel, in which case the decision of the panel shall be the final NERC decision. Within 90 days of the request for review under this Section 1702.8, the ~~NERC~~ Board of Trustees may either (a) issue a decision on the merits, which shall be the final NERC decision, or (b) issue a notice declining to review the decision of the panel, in which case the decision of the panel shall be the final NERC decision. If no written decision or notice declining review is issued within 90 calendar days, the appeal shall be deemed to have been denied by the ~~NERC~~ Board of Trustees and this will have the same effect as a notice declining review.
9. The Registered Entity or Planning Coordinator may appeal the final NERC decision to the ~~a~~Applicable ~~g~~Governmental ~~a~~Authority within 30 days of receipt

of the Board of Trustees' final decision or notice declining review, or expiration of the 90-day review period without any action by NERC.

10. The Planning Coordinator and Registered Entity are encouraged, but not required, to meet to resolve any dispute, including use of mutually agreed to alternative dispute resolution procedures, at any time during the course of the matter. In the event resolution occurs after the filing of a challenge, the Registered Entity and Planning Coordinator shall jointly provide to the applicable Regional Entity a written acknowledgement of withdrawal of the challenge or appeal, including a statement that all outstanding issues have been resolved.

1703. Challenges to NERC Determinations of BES Exception Requests Under Section 509

1. This Section 1703 establishes the procedures to be followed when a Submitting Entity or Owner wishes to challenge a determination by NERC to approve or to disapprove an Exception Request or to terminate an Exception under Section 509.
2. A Submitting Entity (or Owner if different) aggrieved by the decision of NERC to approve or disapprove an Exception Request or to terminate an Exception with respect to any Element may, within 30 days following the date of the decision, file a written challenge to the decision with the NERC Director of Compliance Operations, with copies to the Regional Entity and the Submitting Entity or Owner if different. The challenge shall state the basis of the objection to the decision of NERC. The Regional Entity, and the Submitting Entity or Owner if different, may file a response to the challenge within 30 days following the date the challenge is filed with NERC.
3. The challenge shall be decided by the Board of Trustees Compliance Committee. Within 90 days of the date of submission of the challenge, the Board of Trustees Compliance Committee shall issue its decision on the challenge. The decision of the Board of Trustees Compliance Committee shall be the final NERC decision; provided, that the Board of Trustees Compliance Committee may extend the deadline date for its decision to a date more than 90 days following submission of the challenge, by issuing a notice to the Submitting Entity, the Owner (if different) and the Regional Entity stating the revised deadline date and the reason for the extension.
4. The Submitting Entity, or Owner if different, may appeal the final NERC decision to, or seek review of the final NERC decision by, the Applicable Governmental Authority(ies), in accordance with the legal authority and rules and procedures of the Applicable Governmental Authority(ies). Any such appeal shall be filed within thirty (30) days following the date of the decision of the Board of Trustees Compliance Committee, or within such other time period as is provided for in the legal authority, rules or procedures of the Applicable Governmental Authority.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

ATTACHMENT 2A

**REVISED APPENDIX 2 OF THE RULES OF PROCEDURE –
*DEFINITIONS USED IN THE RULES OF PROCEDURE***

CLEAN VERSION

Proposed revisions 5-04-2012
[Incorporates revisions filed with FERC on January 25, 2012]

**NORTH AMERICAN ELECTRIC RELIABILITY
CORPORATION**

DEFINITIONS USED IN THE RULES OF PROCEDURE

APPENDIX 2 TO THE RULES OF PROCEDURE

Effective: January 31, 2012

General

For purposes of the NERC Rules of Procedure, including all Appendices, the terms defined in this Appendix shall have the meanings set forth herein. For convenience of reference to the user, definitions of terms that are used in a particular Appendix may be repeated in that Appendix.

Where used in the Rules of Procedure, a defined term will be capitalized. Where a term defined in this Appendix appears in the Rules of Procedure but is not capitalized, the term is there being used in its ordinary and commonly understood meaning and not as defined in this Appendix (if different). Other terms that are not defined terms, such as the names of entities, organizations, committees, or programs; position titles; titles of documents or forms; section headings; geographic locations; and other terms commonly presented as proper nouns, may also be capitalized in the Rules of Procedure without being defined in this Appendix.

Definitions of terms in this Appendix that are marked with asterisks (**) are taken from the NERC *Glossary of Terms Used in Reliability Standards*. Definitions of terms in this Appendix that are marked with “pluses” (++) are taken from Section 215 of the Federal Power Act or the Commission’s regulations at 18 C.F.R. Part 39 or Part 388.

Other terms used in the Rules of Procedure but not defined in this Appendix that have commonly understood and used technical meanings in the electric power industry, including applicable codes and standards, shall be construed in accordance with such commonly understood and used technical meanings.

Specific Definitions

“Acceptance of the Exception Request” or “Acceptance” means the determination that an eligible Exception Request (i.e., a Request permitted by section 4.1 of Appendix 5C) contains all the Required Information so that it can undergo substantive review.

“Adjacent Balancing Authority” means a Balancing Authority Area that is interconnected to another Balancing Authority Area either directly or via a multi-party agreement or transmission tariff.**

“Adjusted Penalty Amount” means the proposed Penalty for a violation of a Reliability Standard as determined based on application of the adjustment factors identified in Section 4.3 of the *Sanction Guidelines* to the Base Penalty Amount.

“Advisories” or “Level 1 (Advisories)” is a notification issued by NERC in accordance with Section 810.3.1 of the Rules of Procedure.

“Alleged Violation” means a Possible Violation for which the Compliance Enforcement Authority has determined, based on an assessment of the facts and circumstances surrounding the Possible Violation, that evidence exists to indicate a Registered Entity has violated a Reliability Standard.

“Annual Audit Plan” means a plan developed annually by the Compliance Enforcement Authority that includes the Reliability Standards and Registered Entities to be audited and the schedule of Compliance Audits for the calendar year.

“Annual Report” means the annual report to be filed by NERC with FERC and other Applicable Governmental Authorities in accordance with Section 13.0 of Appendix 4D.

“Applicable Governmental Authority” means the FERC within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.

“Applicable Requirement” means a Requirement of a CIP Standard that (i) expressly provides either (A) that compliance with the terms of the Requirement is required where or as technically feasible, or (B) that technical limitations may preclude compliance with the terms of the Requirement; or (ii) is subject to Appendix 4D by FERC directive.

“Approval of the Exception Request” or “Approval” means the determination by NERC that an Exception Request meets the criteria to receive the requested Exception.

“Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains Load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.**

“Balancing Authority Area” means the collection of generation, transmission, and Loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains Load-resource balance within this area.**

“Base Penalty Amount” means the proposed Penalty for a violation of a Reliability Standard as initially determined pursuant to Sections 4.1 and 4.2 of the NERC *Sanction Guidelines*, before application of any adjustment factors.

“BES Definition” means the NERC definition of the Bulk Electric System as set forth in the NERC *Glossary of Terms Used in Reliability Standards*.

“Blackstart Resource” means a generating unit(s) and its associated set of equipment which has the ability to be started without support from the System or is designed to remain energized without connection to the remainder of the System, with the ability to energize a bus, meeting the Transmission Operator’s restoration plan needs for Real and Reactive Power capability, frequency and voltage control, and that has been included in the Transmission Operator’s restoration plan.**

“Board” or “Board of Trustees” means the Board of Trustees of NERC.

“Board of Trustees Compliance Committee,” “BOTCC” or “Compliance Committee” means the Compliance Committee of the NERC Board of Trustees.

“Bulk Electric System” or “BES” means unless modified by the lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy.

Inclusions:

- **I1** - Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded under Exclusion E1 or E3.
- **I2** - Generating resource(s) with gross individual nameplate rating greater than 20 MVA or gross plant/facility aggregate nameplate rating greater than 75 MVA including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above.
- **I3** - Blackstart Resources identified in the Transmission Operator’s restoration plan.
- **I4** - Dispersed power producing resources with aggregate capacity greater than 75 MVA (gross aggregate nameplate rating) utilizing a system designed primarily for aggregating capacity, connected at a common point at a voltage of 100 kV or above.
- **I5** –Static or dynamic devices (excluding generators) dedicated to supplying or absorbing Reactive Power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer that is designated in Inclusion I1.

Exclusions:

- **E1** - Radial systems: A group of contiguous transmission Elements that emanates from a single point of connection of 100 kV or higher and:
 - a) Only serves Load. Or,
 - b) Only includes generation resources, not identified in Inclusion I3, with an aggregate capacity less than or equal to 75 MVA (gross nameplate rating). Or,
 - c) Where the radial system serves Load and includes generation resources, not identified in Inclusion I3, with an aggregate capacity of non-retail generation less than or equal to 75 MVA (gross nameplate rating).

Note – A normally open switching device between radial systems, as depicted on prints or one-line diagrams for example, does not affect this exclusion.

- **E2** - A generating unit or multiple generating units on the customer’s side of the retail meter that serve all or part of the retail Load with electric energy if: (i) the net capacity

provided to the BES does not exceed 75 MVA, and (ii) standby, back-up, and maintenance power services are provided to the generating unit or multiple generating units or to the retail Load by a Balancing Authority, or provided pursuant to a binding obligation with a Generator Owner or Generator Operator, or under terms approved by the applicable regulatory authority.

- **E3** - Local networks (LN): A group of contiguous transmission Elements operated at or above 100 kV but less than 300 kV that distribute power to Load rather than transfer bulk power across the interconnected system. LN's emanate from multiple points of connection at 100 kV or higher to improve the level of service to retail customer Load and not to accommodate bulk power transfer across the interconnected system. The LN is characterized by all of the following:
 - a) Limits on connected generation: The LN and its underlying Elements do not include generation resources identified in Inclusion I3 and do not have an aggregate capacity of non-retail generation greater than 75 MVA (gross nameplate rating);
 - b) Power flows only into the LN and the LN does not transfer energy originating outside the LN for delivery through the LN; and
 - c) Not part of a Flowgate or transfer path: The LN does not contain a monitored Facility of a permanent Flowgate in the Eastern Interconnection, a major transfer path within the Western Interconnection, or a comparable monitored Facility in the ERCOT or Quebec Interconnections, and is not a monitored Facility included in an Interconnection Reliability Operating Limit (IROL).
- **E4** – Reactive Power devices owned and operated by the retail customer solely for its own use.

Note - Elements may be included or excluded on a case-by-case basis through the Rules of Procedure exception process.**

“Bulk Power System” means, depending on the context: (i) Facilities and control systems necessary for operating an interconnected electric energy supply and transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy [++]. (ii) Solely for purposes of Appendix 4E, Bulk Electric System.

“Canadian” means one of the following: (a) a company or association incorporated or organized under the laws of Canada, or its designated representative(s) irrespective of nationality; (b) an agency of a federal, provincial, or local government in Canada, or its designated representative(s) irrespective of nationality; or (c) a self-representing individual who is a Canadian citizen residing in Canada.

“Canadian Entity” means a Registered Entity (or, solely for purposes of Appendix 4D, a Responsible Entity) that is organized under Canadian federal or provincial law.

“Cascading” means the uncontrolled successive loss of System Elements triggered by an incident at any location. Cascading results in widespread electric service interruption that cannot be restrained from sequentially spreading beyond an area predetermined by studies.**

“CCC” means the NERC Compliance and Certification Committee.

“Certification” means, depending on the context, (i) the process undertaken by NERC and a Regional Entity to verify that an entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator and/or Reliability Coordinator; such Certification activities are further described in Section 500 and Appendix 5A of the NERC Rules of Procedure; or (ii) for purposes of Section 600 of the Rules of Procedure, an official recognition that indicates the recipient has passed a NERC exam or completed a specified number of Continuing Education Hours.

“Certification Staff” means individuals employed or contracted by NERC who have the authority to make initial determinations of Certification of entities performing reliability functions.

“Certification Team” means a team assembled by a Regional Entity that will be responsible for performing the activities included in the Certification process for an entity pursuant to Appendix 5A.

“Classified National Security Information” means Required Information that has been determined to be protected from unauthorized disclosure pursuant to Executive Order No. 12958, as amended, and/or the regulations of the NRC at 10 C.F.R. §95.35; or pursuant to any comparable provision of Canadian federal or provincial law.

“Clerk” means an individual assigned by the Compliance Enforcement Authority to perform administrative tasks relating to the conduct of hearings as described in Attachment 2, Hearing Procedures, to Appendix 4C.

“Commission” means the Federal Energy Regulatory Commission or FERC.

“Complaint” means an allegation that a Registered Entity violated a Reliability Standard.

“Compliance and Certification Manager” means individual/individuals within the Regional Entity that is/are responsible for monitoring compliance of entities with applicable NERC Reliability Standards.

“Compliance Audit” means a systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the Requirements of applicable Reliability Standards.

“Compliance Audit Participants” means Registered Entities scheduled to be audited and the audit team members.

“Compliance Enforcement Authority” means NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.

“Compliance Enforcement Authority’s Area of Responsibility” means the Compliance Enforcement Authority’s Region. If a Regional Entity is the Compliance Enforcement Authority, the Compliance Enforcement Authority’s Area of Responsibility is shown in Exhibit A to the delegation agreement between the Regional Entity and NERC.

“Compliance Investigation” means a comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.

“Compliance Monitoring and Enforcement Program” or “CMEP” means, depending on the context (1) the NERC *Uniform Compliance Monitoring and Enforcement Program* (Appendix 4C to the NERC Rules of Procedure) or the Commission-approved program of a Regional Entity, as applicable, or (2) the program, department or organization within NERC or a Regional Entity that is responsible for performing compliance monitoring and enforcement activities with respect to Registered Entities’ compliance with Reliability Standards.

“Compliant Date” means the date by which a Responsible Entity is required to be in compliance with an Applicable Requirement of a CIP Standard.

“Confidential Business and Market Information” means any information that pertains to the interests of any entity, that was developed or acquired by that entity, and that is proprietary or competitively sensitive.

“Confidential Information” means (i) Confidential Business and Market Information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; or (vi) Cyber Security Incident Information; provided, that public information developed or acquired by an entity shall be excluded from this definition; or (vii) for purposes of Appendix 4D, any other information that is designated as Confidential Information in Section 11.0 of Appendix 4D.

“Confirmed Violation” means an Alleged Violation for which (1) the Registered Entity has accepted or not contested the Notice of Alleged Violation and 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.

“Continuing Education Hour” or “CE Hour” 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.

“Continuing Education Program Provider” or “Provider” means the individual or organization offering a learning activity to participants and maintaining documentation required by Section 600 of the Rules of Procedure.

“Coordinated Functional Registration” means where two or more entities (parties) agree in writing upon a division of compliance responsibility among the parties for one or more Reliability Standard(s) applicable to a particular function, and/or for one or more Requirement(s)/sub-Requirement(s) within particular Reliability Standard(s).

“Covered Asset” means a Cyber Asset or Critical Cyber Asset that is subject to an Applicable Requirement.

“Credential” means a NERC designation that indicates the level of qualification achieved (i.e., reliability operator; balancing, interchange, and transmission operator; balancing and interchange operator; and transmission operator).

“Critical Assets” means Facilities, systems, and equipment which, if destroyed, degraded, or otherwise rendered unavailable, would affect the reliability or operability of the Bulk Electric System.**

“Critical Cyber Assets” means Cyber Assets critical to the reliable operation of Critical Assets.**

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

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

“Critical Infrastructure Protection Standard” or “CIP Standard” means any of NERC Reliability Standards CIP-002 through CIP-009.

“Cross-Border Regional Entity” means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.++

“Cyber Assets” means programmable electronic devices and communication networks including hardware, software, and data.**

“Cyber Security Incident” means any malicious or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk Power System.++

“Cyber Security Incident Information” means any information related to, describing, or which could be used to plan or cause a Cyber Security Incident.

“Days”, as used in Appendix 5A with respect to the Registration and Certification processes, means calendar days.

“Delegate” means a person to whom the Senior Manager of a Responsible Entity has delegated authority pursuant to Requirement R2.3 of CIP Standard CIP-003-1 (or any successor provision).

“Director of Compliance” means the Director of Compliance of NERC or of the Compliance Enforcement Authority, as applicable, or other individual designated by the Compliance Enforcement Authority who is responsible for the management and supervision of Compliance Staff, or his or her designee.

“Disapproval of the Exception Request” or “Disapproval” means the determination by NERC that an Exception Request does not meet the criteria to receive the requested Exception.

“Distribution Factor” means the portion of an Interchange Transaction, typically expressed in per unit that flows across a transmission facility (Flowgate).**

“Distribution Provider” means the entity that provides and operates the “wires” between the transmission system and the end-use customer. For those end-use customers who are served at transmission voltages, the Transmission Owner also serves as the Distribution Provider. Thus, the Distribution Provider is not defined by a specific voltage, but rather as performing the distribution function at any voltage.**

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“Effective Date” means the date, as specified in a notice rejecting or disapproving a TFE Request or terminating an approved TFE, on which the rejection, disapproval or termination becomes effective.

“Electric Reliability Organization” or “ERO” means the organization that is certified by the Commission under Section 39.3 of its regulations, the purpose of which is to establish and enforce Reliability Standards for the Bulk Power System in the United States, subject to Commission review. The organization may also have received recognition by Applicable

Governmental Authorities in Canada and Mexico to establish and enforce Reliability Standards for the Bulk Power Systems of the respective countries.

“Element” means any electrical device with terminals that may be connected to other electrical devices such as a generator, transformer, circuit breaker, bus section, or transmission line. An Element may be comprised of one or more components.**

“Eligible Reviewer” means a person who has the required security clearances or other qualifications, or who otherwise meets the applicable criteria, to have access to Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information, as applicable to the particular information to be reviewed.

“End Date” means the last date of the period to be covered in a Compliance Audit.

“Essential Actions” or “Level 3 (Essential Actions)” is a notification issued by NERC in accordance with Section 810.3.3 of the Rules of Procedure.

“Evidentiary Hearing” means a hearing at which one or more Participants submits evidence for the record. A Testimonial Hearing is an Evidentiary Hearing, but an Evidentiary Hearing does not necessarily include the presentation of testimony by witnesses in person.

“Exception” means either an Inclusion Exception or an Exclusion Exception.

“Exception Procedure” means the procedure set forth in Appendix 5C.

“Exception Report” means information provided to the Compliance Enforcement Authority by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a System Operating Limit has been exceeded) or enabling the Compliance Enforcement Authority to ascertain the Registered Entity’s compliance.

“Exception Request” means a request made by a Submitting Entity in accordance with Appendix 5C for an Exception.

“Exception Request Form” means the form adopted by each Regional Entity, in accordance with a template provided by NERC, for use by Submitting Entities in submitting Exception Requests; provided, that the Exception Request Form must include Section III.B as adopted by NERC.

“Exclusion Exception” means a determination that an Element that falls within the BES Definition should be excluded from the BES.

“Expiration Date” means the date on which an approved TFE expires.

“Facility” means a set of electrical equipment that operates as a single Bulk Electric System Element (e.g., a line, a generator, a shunt compensator, transformer, etc.)**

“FERC” means the United States Federal Energy Regulatory Commission.

“Final Penalty Amount” means the final, proposed Penalty for violation of a Reliability Standard, determined in accordance with the *Sanction Guidelines*.

“Flowgate” means 1.) A portion of the transmission system through which the Interchange Distribution Calculator calculates the power flow from Interchange Transactions. 2.) A mathematical construct, comprised of one or more monitored transmission Facilities and optionally one or more contingency Facilities, used to analyze the impact of power flows upon the Bulk Electric System.**

“FOIA” means the U.S. Freedom of Information Act, 5 U.S.C. §552.

“Footprint” means the geographical or electric area served by an entity.

“Functional Entity” means an entity responsible for a function that is required to ensure the Reliable Operation of the electric grid as identified in the NERC Reliability Standards.

“Generator Operator” means the entity that operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services.**

“Generator Owner” means an entity that owns and maintains generating units.**

“Hearing Body” or “Regional Entity Hearing Body” means the body established or designated by the Compliance Enforcement Authority to conduct hearings and issue decisions concerning disputed compliance matters in accordance with Attachment 2, Hearing Procedures, of Appendix 4C.

“Hearing Officer” means, depending on the context, (i) an individual employed or contracted by the Compliance Enforcement Authority and designated by the Compliance Enforcement Authority to preside over hearings conducted pursuant to Attachment 2, Hearing Procedures, of Appendix 4C, or (ii) solely for hearings conducted pursuant to Appendix 4E, (A) a CCC member or (B) an individual employed or contracted by NERC, as designated and approved by the CCC to preside over hearings conducted pursuant to the Hearing Procedures in Appendix E; the Hearing Officer shall not be a member of the Hearing Panel.

“Hearing Panel” means the five person hearing body established as set forth in the CCC Charter on a case by case basis and that is responsible for adjudicating a matter as set forth in Appendix 4E.

“Hearing Procedures” means, depending on the context, (i) Attachment 2 to the NERC or a Regional Entity CMEP, as applicable, or (ii) the hearing procedures of the NERC Compliance and Certification Committee in Appendix 4E.

“Inclusion Exception” means a determination that an Element that falls outside the BES Definition should be included in the BES.

“Interchange” means energy transfers that cross Balancing Authority boundaries.**

“Interchange Authority” means the responsible entity that authorizes the implementation of valid and balanced Interchange Schedules between Balancing Authority Areas, and ensures communications of Interchange information for reliability assessment purposes.**

“Interchange Distribution Calculator” means the mechanism used by Reliability Coordinators in the Eastern Interconnection to calculate the distribution of Interchange Transactions over specific Flowgates. It includes a database of all Interchange Transactions and a matrix of the Distribution Factors for the Eastern Interconnection.**

“Interchange Schedule” means an agreed-upon Interchange Transaction size (megawatts), start and end time, beginning and ending ramp times and rate, and type required for delivery and receipt of power and energy between the Source and Sink Balancing Authorities involved in the transaction.**

“Interchange Transaction” means an agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries.**

“Interconnected Operations Service” means a service (exclusive of basic energy and Transmission Services) that is required to support the Reliable Operation of interconnected Bulk Electric Systems.**

“Interconnection” means a geographic area in which the operation of Bulk Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the Facilities within their control.++

“Interconnection Reliability Operating Limit” means a System Operating Limit that, if violated, could lead to instability, uncontrolled separation, or Cascading outages that adversely impact the reliability of the Bulk Electric System.**

“Interpretation” means an addendum to a Reliability Standard, developed in accordance with the NERC *Standard Processes Manual* and approved by the Applicable Governmental Authority(ies), that provides additional clarity about one or more Requirements in the Reliability Standard.

“ISO/RTO” means an independent transmission system operator or regional transmission organization approved by the FERC or the Public Utility Commission of Texas.

“Joint Registration Organization” means an entity that registers in the Compliance Registry to perform reliability functions for itself and on behalf of one or more of its members or related entities for which such members or related entities would otherwise be required to register.

“Lead Entity” means the entity that submits Exception Request information that is common to a group of Submitting Entities that are submitting Exception Requests jointly.

“Lead Mediator” means a member of a mediation team formed pursuant to Appendix 4E who is selected by the members to coordinate the mediation process and serve as the mediation team’s primary contact with the Parties.

“Load” means an end-user device or customer that receives power from the electric system.**

“Load-Serving Entity” means an entity that secures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.**

“Mapping” means the process of determining whether a Regional Entity’s Footprint is being served by Registered Entities.

“Mediation Settlement Agreement” means a written agreement entered into by the Parties to a mediation pursuant to Appendix 4E that resolves the dispute.

“Member” means a member of NERC pursuant to Article II of its Bylaws.

“Member Representatives Committee” or “MRC” means the body established pursuant to Article VIII of the NERC Bylaws.

“Mexican Entity” means a Registered Entity that is organized under Mexican law.

“Mitigating Activities” means 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.

“Mitigation Plan” means an action plan developed by the Registered Entity to (1) correct a violation of a Reliability Standard and (2) prevent re-occurrence of the violation.

“NERC-Approved Learning Activity” means training that maintains or improves professional competence and has been approved by NERC for use in its Continuing Education Program.

“NERC Compliance Monitoring and Enforcement Program Implementation Plan” or “NERC Implementation Plan” means the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the Compliance Enforcement Authority in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.

“NERC Compliance Registry,” “Compliance Registry” or “NCR” means a list, maintained by NERC pursuant to Section 500 of the NERC Rules of Procedure and Appendix 5B, the NERC *Statement of Compliance Registry Criteria*, of the owners, operators and users of the Bulk Power System, and the entities registered as their designees, that perform one or more functions in support of reliability of the Bulk Power System and are required to comply with one or more Requirements of Reliability Standards.

“NERC Identification Number” or “NERC ID” means a number given to NERC Registered Entities that will be used to identify the entity for certain NERC activities. Corporate entities may have multiple NERC IDs to show different corporate involvement in NERC activities.

“NERC Organization Certification” or “Organization Certification” means the process undertaken by NERC and a Regional Entity to verify that a new entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator, and/or Reliability Coordinator; such certification activities are further described in Section 500 and Appendix 5A of the NERC Rules of Procedure.

“Net Energy for Load” or “NEL” means net generation of an electric system plus energy received from others less energy delivered to others through interchange. It includes system losses but excludes energy required for the storage of energy at energy storage facilities.

“Notice of Alleged Violation and Proposed Penalty or Sanction” means a notice issued by the Compliance Enforcement Authority to a Registered Entity pursuant to Section 5.3 of Appendix 4C.

“Notice of Completion of Enforcement Action” means a notice issued by the Compliance Enforcement Authority to a Registered Entity, pursuant to Section 5.10 of Appendix 4C, stating that an enforcement action is closed.

“Notice of Confirmed Violation” means a notice issued by the Compliance Enforcement Authority to a Registered Entity confirming the violation of one or more Reliability Standards.

“Notice of Penalty” means a notice prepared by NERC and filed with FERC, following approval by NERC of a Notice or other notification of Confirmed Violation or a settlement agreement, stating the Penalty or sanction imposed or agreed to for the Confirmed Violation or as part of the settlement.

“Notice of Possible Violation” means a notice issued by the Compliance Enforcement Authority to a Registered Entity that (1) states a Possible Violation has been identified, (2) provides a brief description of the Possible Violation, including the Reliability Standard Requirement(s) and the date(s) involved, and (3) instructs the Registered Entity to retain and preserve all data and records relating to the Possible Violation.

“NRC” means the United States Nuclear Regulatory Commission.

“NRC Safeguards Information” means Required Information that is subject to restrictions on disclosure pursuant to 42 U.S.C. §2167 and the regulations of the NRC at 10 C.F.R. §73.21-73.23; or pursuant to comparable provisions of Canadian federal or provincial law.

“Open Access Transmission Tariff” means an electronic transmission tariff accepted by the U.S. Federal Energy Regulatory Commission requiring the Transmission Service Provider to furnish to all shippers with non-discriminating service comparable to that provided by Transmission Owners to themselves.**

“Owner” means the owner(s) of an Element or Elements that is or may be determined to be part of the BES as a result of either the application of the BES Definition or an Exception, or another entity, such as an operator, authorized to act on behalf of the owner of the Element or Elements in the context of an Exception Request.

“Part A Required Information” means Required Information that is to be provided in Part A of a Responsible Entity’s TFE Request.

“Part B Required Information” means Required Information that is to be provided in Part B of a Responsible Entity’s TFE Request.

“Participant” means a Respondent and any other Person who is allowed or required by the Hearing Body or by FERC to participate as an intervenor in a proceeding conducted pursuant to the Hearing Procedures, and as used in the Hearing Procedures shall include, depending on the context, the members of the Compliance Staff that participate in a proceeding or the members of the Certification Staff that participate in a proceeding pursuant to Appendix 4E.

“Party” or “Parties” means a Person or the Persons participating in a mediation pursuant to Appendix 4E.

“Penalty” means and includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity or Respondent to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s or Respondent’s violation and take into consideration any timely efforts made by the Registered Entity or Respondent to remedy the violation.

“Periodic Data Submittals” means modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the Compliance Enforcement Authority on a time frame required by a Reliability Standard or an ad hoc basis.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Planning Authority” means the responsible entity that coordinates and integrates transmission Facilities and service plans, resource plans, and Protection Systems.**

“Point of Delivery” means a location that a Transmission Service Provider specifies on its transmission system where an Interchange Transaction leaves or a Load-Serving Entity receives its energy.**

“Point of Receipt” means a location that the Transmission Service Provider specifies on its transmission system where an Interchange Transaction enters or a generator delivers its output.

“Possible Violation” means the identification, by the Compliance Enforcement Authority, of a possible failure by a Registered Entity to comply with a Reliability Standard that is applicable to the Registered Entity.

“Preliminary Screen” means an initial evaluation of evidence indicating potential noncompliance with a Reliability Standard has occurred or is occurring, conducted by the Compliance Enforcement Authority for the purpose of determining whether a Possible Violation exists, and consisting of an evaluation of whether (1) the entity allegedly involved in the potential noncompliance is registered, (2) the Reliability Standard Requirement to which the evidence of potential noncompliance relates is applicable to a reliability function for which the entity is registered, and (3) if known, the potential noncompliance is not a duplicate of a Possible Violation or Alleged Violation which is currently being processed.

“Probation” means a step in the disciplinary process pursuant to Section 605 of the Rules of Procedure during which the certificate is still valid. During the probationary period, a subsequent offense of misconduct, as determined through the same process as described above, may be cause for more serious consequences.

“Protected FOIA Information” means Required Information, held by a governmental entity, that is subject to an exemption from disclosure under FOIA (5 U.S.C. §552(e)), under any similar state or local statutory provision, or under any comparable provision of Canadian federal or provincial law, which would be lost were the Required Information to be placed into the public domain.

“Protection System” means protective relays which respond to electrical quantities, communications systems necessary for correct operation of protective functions, voltage and current sensing devices providing inputs to protective relays, station dc supply associated with protective functions (including batteries, battery chargers, and non-battery-based dc supply), and control circuitry associated with protective functions through the trip coil(s) of the circuit breakers or other interrupting devices.**

“Purchasing-Selling Entity” means the entity that purchases, or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities.**

“Reactive Power” means the portion of electricity that establishes and sustains the electric and magnetic fields of alternating-current equipment. Reactive Power must be supplied to most types of magnetic equipment, such as motors and transformers. It also must supply the reactive losses on transmission facilities. Reactive Power is provided by generators, synchronous condensers, or electrostatic equipment such as capacitors and directly influences electric system voltage. It is usually expressed in kilovars (kvar) or megavars (Mvar).**

“Real Power” means the portion of electricity that supplies energy to the Load.**

“Receiving Entity” means NERC or a Regional Entity receiving Confidential Information from an owner, operator, or user of the Bulk Power System or from any other party.

“Recommendation” for purposes of Appendix 5C means the report to NERC containing the evaluation prepared in accordance with section 5.2 of Appendix 5C concerning whether or to what extent an Exception Request should be approved.

“Recommendations” or “Level 2 (Recommendations)” is a notification issued by NERC in accordance with Section 810.3.2 of the Rules of Procedure.

“Region” means the geographic area, as specified in a Regional Entity’s delegation agreement with NERC, within which the Regional Entity is responsible for performing delegated functions.

“Regional Criteria” means reliability requirements developed by a Regional Entity that are necessary to implement, to augment, or to comply with Reliability Standards, but which are not Reliability Standards. Such Regional Criteria may be necessary to account for physical differences in the Bulk Power System but are not inconsistent with Reliability Standards nor do they result in lesser reliability. Such Regional Criteria are not enforceable pursuant to NERC-delegated authorities, but may be enforced through other available mechanisms. Regional Criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents.

“Regional Entity” means an entity having enforcement authority pursuant to 18 C.F.R. § 39.8.++

“Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan” or “Regional Implementation Plan” means an annual plan, submitted by on or about October 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the Regional Entity, (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the Regional Entity’s Annual Audit Plan.

“Regional Reliability Standard” means a type of Reliability Standard that is applicable only within a particular Regional Entity or group of Regional Entities. A Regional Reliability Standard may augment, add detail to, or implement another Reliability Standard or cover matters not addressed by other Reliability Standards. Regional Reliability Standards, upon adoption by NERC and approval by the Applicable Governmental Authority(ies), shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities or to procedures prescribed by the Applicable Governmental Authority.

“Registered Ballot Body” means that aggregation of all entities or individuals that qualify for one of the Segments approved by the Board of Trustees, and are registered with NERC as potential ballot participants in the voting on proposed Reliability Standards.

“Registered Entity” means an owner, operator, or user of the Bulk Power System, or the entity registered as its designee for the purpose of compliance, that is included in the NERC Compliance Registry.

“Registration” or “Organization Registration” means the processes undertaken by NERC and Regional Entities to identify which entities are responsible for reliability functions within the Regional Entity’s Region.

“Rejection of the Exception Request” or “Rejection” means the determination that an Exception Request is not an eligible Exception Request (i.e., a Request permitted by section 4.1 of Appendix 5C) or does not contain all the Required Information in accordance with section 4.5 of Appendix 5C in order to be reviewed for substance.

“Reliability Coordinator” means the entity that is the highest level of authority who is responsible for the Reliable Operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator’s vision.**

“Reliability Coordinator Area” means the collection of generation, transmission and loads within the boundaries of the Reliability Coordinator. Its boundary coincides with one or more Balancing Authority Areas.**

“Reliability Standard” means a requirement to provide for Reliable Operation of the Bulk Power System, including without limiting the foregoing, requirements for the operation of existing Bulk Power System Facilities, including cyber security protection, and including the design of planned additions or modifications to such Facilities to the extent necessary for Reliable Operation of the Bulk Power System, but the term does not include any requirement to enlarge Bulk Power System Facilities or to construct new transmission capacity or generation capacity. A Reliability Standard shall not be effective in the United States until approved by the Federal Energy Regulatory Commission and shall not be effective in other jurisdictions until made or allowed to become effective by the Applicable Governmental Authority.

“Reliability Standards Development Plan” means the forward-looking plan developed by NERC on an annual basis setting forth the Reliability Standards development projects that are scheduled to be worked on during the ensuing three-year period, as specified in Section 310 of the Rules of Procedure.

“Reliable Operation” means operating the Elements of the Bulk Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or Cascading failures of such system will not occur as a result of a sudden disturbance, including a Cyber Security Incident, or unanticipated failure of system Elements.++

“Remedial Action Directive” means 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.

“Reporting Entity” means an entity required to provide data or information requested by NERC or a Regional Entity in a request for data or information pursuant to Section 1600 of the Rules of Procedure.

“Requirement” means an explicit statement in a Reliability Standard that identifies the functional entity responsible, the action or outcome that must be achieved, any conditions achieving the action or outcome, and the reliability-related benefit of the action or outcome. Each Requirement shall be a statement with which compliance is mandatory.

“Required Date” means the date given a Registered Entity in a notice from the Compliance Enforcement Authority by which some action by the Registered Entity is required.

“Required Information” means, as applicable, either (i) the information required to be provided in a TFE Request, as specified in Section 4.0 of Appendix 4D; or (ii) the information required to be provided in an Exception Request, as specified in section 4.0 of Appendix 5C.

“Reserve Sharing Group” means a group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating reserves required for each Balancing Authority’s use in recovering from contingencies within the group. Scheduling energy from an Adjacent Balancing Authority to aid recovery need not constitute reserve sharing provided the transaction is ramped in over a period the supplying party could reasonably be expected to load generation in (e.g. ten minutes). If the transaction is ramped in quicker, (e.g., between zero and ten minutes), then, for the purposes of disturbance control performance, the areas become a Reserve Sharing Group.**

“Resource Planner” means the entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority area.**

“Respondent” means, depending on the context, the Registered Entity, who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive that is the basis for the proceeding, whichever is applicable, or the Registered Entity that is the subject of the Certification decision that is the basis for a proceeding under Appendix 4E.

“Responsible Entity” means an entity that is registered for a reliability function in the NERC Compliance Registry and is responsible for complying with an Applicable Requirement, as specified in the “Applicability” section of the CIP Standard.

“Revoked” means a NERC certificate that has been suspended for more than twelve months. While in this state, a certificate holder can not perform any task that requires an operator to be NERC-certified. The certificate holder will be required to pass an exam to be certified again.

Any CE Hours accumulated prior to or during the revocation period will not be counted towards Credential Maintenance.

“Revoke for Cause” means a step in the disciplinary process pursuant to Section 605 of the Rules of Procedure during which the certificate is no longer valid and requiring successfully passing an exam to become certified. However, an exam will not be authorized until the revocation period expires. CE Hours earned before or during this revocation period will not be counted for maintaining a Credential.

“Scope of Responsibility” means the registered functions of a Planning Authority, Reliability Coordinator, Transmission Operator, Transmission Planner or Balancing Authority and the geographical or electric region in which the Planning Authority, Reliability Coordinator, Transmission Operator, Transmission Planner or Balancing Authority operates to perform its registered functions, or with respect to a Regional Entity, its Regional Entity Region.

“Section I Required Information” means Required Information that is to be provided in Section I of a Submitting Entity’s Exception Request.

“Section II Required Information” means Required Information that is to be provided in Section II of a Submitting Entity’s Exception Request.

“Section III Required Information” means Required Information that is to be provided in Section III of a Submitting Entity’s Exception Request.

“Sector” means a group of Members of NERC that are Bulk Power System owners, operators, or users or other persons and entities with substantially similar interests, including governmental entities, as pertinent to the purposes and operations of NERC and the operation of the Bulk Power System, as defined in Article II, Section 4 of the NERC Bylaws. Each Sector shall constitute a class of Members for purposes of the New Jersey Nonprofit Corporation Act.

“Segment” means one of the subsets of the Registered Ballot Body whose members meet the qualification criteria for the subset.

“Self-Certification” means an attestation by a Registered Entity that it is compliant or non-compliant with a Reliability Standard Requirement that is the subject of the 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.

“Self-Report” means a report by a Registered Entity stating that the Registered Entity believes it has, or may have, violated a Reliability Standard.

“Senior Manager” means the person assigned by the Responsible Entity, in accordance with CIP Standard CIP-003-1 Requirement R2 (or subsequent versions), to have overall responsibility for leading and managing the Responsible Entity’s implementation of, and adherence to, the CIP Standards.

“Sink Balancing Authority” means the Balancing Authority in which the Load (sink) is located for an Interchange Transaction.**

“Source Balancing Authority” means the Balancing Authority in which the generation (source) is located for an Interchange Transaction.**

“Special Protection System” means an automatic protection system designed to detect abnormal or predetermined system conditions, and take corrective actions other than and/or in addition to the isolation of faulted components to maintain system reliability. Such action may include changes in demand, generation (MW and Mvar), or system configuration to maintain system stability, acceptable voltage, or power flows. A Special Protection System does not include (a) underfrequency or undervoltage Load shedding or (b) fault conditions that must be isolated, or (c) out-of-step relaying (not designed as an integral part of a Special Protection System).**

“Spot Check” means a process in which the Compliance Enforcement Authority requests a Registered Entity to provide information (1) to support the Registered Entity’s Self-Certification, Self-Report, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards, or (2) as a random check, or (3) in response to operating problems or system events.

“Staff” or “Compliance Staff” means individuals employed or contracted by NERC or the Compliance Enforcement Authority who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans.

“Strict Compliance” means compliance with the terms of an Applicable Requirement without reliance on a Technical Feasibility Exception.

“Submitting Entity” means (i) an owner, operator, or user of the Bulk Power System or any other party that submits information to NERC or a Regional Entity that it reasonably believes contains Confidential Information or, (ii) solely for purposes of Appendix 5C, the entity that submits an Exception Request in accordance with section 4.0 of Appendix 5C.

“Suspended” means certificate status due to an insufficient number of CE Hours being submitted prior to the expiration of a certificate. While in this state, a certificate holder can not perform any task that requires an operator to be NERC-certified.

“System” means a combination of generation, transmission and distribution components.**

“System Operating Limit” means the value (such as MW, Mvar, amperes, frequency or volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria.**

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies NERC’s or the Compliance Enforcement Authority’s (as applicable) conflict of

interest policy and is selected to assist in a proceeding by providing technical advice to the Hearing Officer and/or the Hearing Body or Hearing Panel.

“Technical Feasibility Exception” or “TFE” means an exception from Strict Compliance with the terms of an Applicable Requirement on grounds of technical feasibility or technical limitations in accordance with one or more of the criteria in section 3.0 of Appendix 4D.

“Technical Review Panel” means a panel established pursuant to section 5.3 of Appendix 5C.

“Termination of Credential” means a step in the disciplinary process pursuant to Section 605 of the Rules of Procedure whereby a Credential is permanently Revoked.

“Testimonial Hearing” means an Evidentiary Hearing at which the witness or witnesses on behalf of one or more Participants appears in person to present testimony and be subject to cross-examination.

“TFE Request” means a request submitted by a Responsible Entity in accordance with Appendix 4D for an exception from Strict Compliance with an Applicable Requirement.

“Transmission Customer” means 1. any eligible customer (or its designated agent) that can or does execute a Transmission Service agreement or can and does receive Transmission Service. 2. Any of the following responsible entities: Generator Owner, Load-Serving Entity, or Purchasing-Selling Entity.**

“Transmission Operator” means the entity responsible for the reliability of its “local” transmission system, and that operates or directs the operations of the transmission Facilities.**

“Transmission Owner” means the entity that owns and maintains transmission Facilities.**

“Transmission Planner” means the entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority area.**

“Transmission Service” means services provided to the Transmission Customer by the Transmission Service Provider to move energy from a Point of Receipt to a Point of Delivery.**

“Transmission Service Provider” means the entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable Transmission Service agreements.**

“Variance” means an aspect or element of a Reliability Standard that applies only within a particular Regional Entity or group of Regional Entities, or to a particular entity or class of entities. A Variance allows an alternative approach to meeting the same reliability objective as the Reliability Standard, and is typically necessitated by a physical difference. A Variance is embodied within a Reliability Standard and as such, if adopted by NERC and approved by the Applicable Governmental Authority(ies), shall be enforced within the applicable Regional Entity

or Regional Entities pursuant to delegated authorities or to procedures prescribed by the Applicable Governmental Authority.

“Violation Risk Factor” or “VRF” means a factor (lower, medium or high) assigned to each Requirement of a Reliability Standard to identify the potential reliability significance of noncompliance with the Requirement.

“Violation Severity Level” or “VSL” means a measure (lower, moderate, high or severe) of the degree to which compliance with a Requirement was not achieved.

“Wide Area” means the entire Reliability Coordinator Area as well as the critical flow and status information from adjacent Reliability Coordinator Areas as determined by detailed system studies to allow the calculation of Interconnected Reliability Operating Limits.**

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

ATTACHMENT 2B

REVISED APPENDIX 2 OF THE RULES OF PROCEDURE –
DEFINITIONS USED IN THE RULES OF PROCEDURE

REDLINED VERSION

Proposed revisions 5-04-2012
[Incorporates revisions filed with FERC on January 25, 2012]

**NORTH AMERICAN ELECTRIC RELIABILITY
CORPORATION**

DEFINITIONS USED IN THE RULES OF PROCEDURE

APPENDIX 2 TO THE RULES OF PROCEDURE

Effective: January 31, 2012

General

For purposes of the NERC Rules of Procedure, including all Appendices, the terms defined in this Appendix shall have the meanings set forth herein. For convenience of reference to the user, definitions of terms that are used in a particular Appendix may be repeated in that Appendix.

Where used in the Rules of Procedure, a defined term will be capitalized. Where a term defined in this Appendix appears in the Rules of Procedure but is not capitalized, the term is there being used in its ordinary and commonly understood meaning and not as defined in this Appendix (if different). Other terms that are not defined terms, such as the names of entities, organizations, committees, or programs; position titles; titles of documents or forms; section headings; geographic locations; and other terms commonly presented as proper nouns, may also be capitalized in the Rules of Procedure without being defined in this Appendix.

Definitions of terms in this Appendix that are marked with asterisks (**) are taken from the NERC *Glossary of Terms Used in Reliability Standards*. Definitions of terms in this Appendix that are marked with “pluses” (++) are taken from Section 215 of the Federal Power Act or the Commission’s regulations at 18 C.F.R. Part 39 or Part 388.

Other terms used in the Rules of Procedure but not defined in this Appendix that have commonly understood and used technical meanings in the electric power industry, including applicable codes and standards, shall be construed in accordance with such commonly understood and used technical meanings.

Specific Definitions

“Acceptance of the Exception Request” or “Acceptance” means the determination that an eligible Exception Request (i.e., a Request permitted by section 4.1 of Appendix 5C) contains all the Required Information so that it can undergo substantive review.

“Adjacent Balancing Authority” means a Balancing Authority Area that is interconnected to another Balancing Authority Area either directly or via a multi-party agreement or transmission tariff.**

“Adjusted Penalty Amount” means the proposed Penalty for a violation of a Reliability Standard as determined based on application of the adjustment factors identified in Section 4.3 of the *Sanction Guidelines* to the Base Penalty Amount.

“Advisories” or “Level 1 (Advisories)” is a notification issued by NERC in accordance with Section 810.3.1 of the Rules of Procedure.

“Alleged Violation” means a Possible Violation for which the Compliance Enforcement Authority has determined, based on an assessment of the facts and circumstances surrounding the Possible Violation, that evidence exists to indicate a Registered Entity has violated a Reliability Standard.

“Annual Audit Plan” means a plan developed annually by the Compliance Enforcement Authority that includes the Reliability Standards and Registered Entities to be audited, and the schedule of Compliance Audits, ~~and Compliance Audit Participant requirements~~ for the calendar year.

“Annual Report” means the annual report to be filed by NERC with FERC and other Applicable Governmental Authorities in accordance with Section 13.0 of Appendix 4D.

“Applicable Governmental Authority” means the FERC within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.

“Applicable Requirement” means a Requirement of a CIP Standard that (i) expressly provides either (A) that compliance with the terms of the Requirement is required where or as technically feasible, or (B) that technical limitations may preclude compliance with the terms of the Requirement; or (ii) is subject to Appendix 4D by FERC directive.

“Approval of the Exception Request” or “Approval” means the determination by NERC that an Exception Request meets the criteria to receive the requested Exception.

“Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains Load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.**

“Balancing Authority Area” means the collection of generation, transmission, and Loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains Load-resource balance within this area.**

“Base Penalty Amount” means the proposed Penalty for a violation of a Reliability Standard as initially determined pursuant to Sections 4.1 and 4.2 of the NERC *Sanction Guidelines*, before application of any adjustment factors.

“BES Definition” means the NERC definition of the Bulk Electric System as set forth in the NERC *Glossary of Terms Used in Reliability Standards*.

“Blackstart Resource” means a generating unit(s) and its associated set of equipment which has the ability to be started without support from the System or is designed to remain energized without connection to the remainder of the System, with the ability to energize a bus, meeting the Transmission Operator’s restoration plan needs for Real and Reactive Power capability, frequency and voltage control, and that has been included in the Transmission Operator’s restoration plan.**

“Board” or “Board of Trustees” means the Board of Trustees of NERC.

“Board of Trustees Compliance Committee,” “BOTCC” or “Compliance Committee” means the Compliance Committee of the NERC Board of Trustees.

“Bulk Electric System” or “BES” means unless modified by the lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy.

Inclusions:

- **I1** - Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded under Exclusion E1 or E3.
- **I2** - Generating resource(s) with gross individual nameplate rating greater than 20 MVA or gross plant/facility aggregate nameplate rating greater than 75 MVA including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above.
- **I3** - Blackstart Resources identified in the Transmission Operator’s restoration plan.
- **I4** - Dispersed power producing resources with aggregate capacity greater than 75 MVA (gross aggregate nameplate rating) utilizing a system designed primarily for aggregating capacity, connected at a common point at a voltage of 100 kV or above.
- **I5** –Static or dynamic devices (excluding generators) dedicated to supplying or absorbing Reactive Power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer that is designated in Inclusion I1.

Exclusions:

- **E1** - Radial systems: A group of contiguous transmission Elements that emanates from a single point of connection of 100 kV or higher and:
 - a) Only serves Load. Or,
 - b) Only includes generation resources, not identified in Inclusion I3, with an aggregate capacity less than or equal to 75 MVA (gross nameplate rating). Or,
 - c) Where the radial system serves Load and includes generation resources, not identified in Inclusion I3, with an aggregate capacity of non-retail generation less than or equal to 75 MVA (gross nameplate rating).

Note – A normally open switching device between radial systems, as depicted on prints or one-line diagrams for example, does not affect this exclusion.

- **E2** - A generating unit or multiple generating units on the customer’s side of the retail meter that serve all or part of the retail Load with electric energy if: (i) the net capacity

provided to the BES does not exceed 75 MVA, and (ii) standby, back-up, and maintenance power services are provided to the generating unit or multiple generating units or to the retail Load by a Balancing Authority, or provided pursuant to a binding obligation with a Generator Owner or Generator Operator, or under terms approved by the applicable regulatory authority.

- **E3** - Local networks (LN): A group of contiguous transmission Elements operated at or above 100 kV but less than 300 kV that distribute power to Load rather than transfer bulk power across the interconnected system. LN's emanate from multiple points of connection at 100 kV or higher to improve the level of service to retail customer Load and not to accommodate bulk power transfer across the interconnected system. The LN is characterized by all of the following:
 - a) Limits on connected generation: The LN and its underlying Elements do not include generation resources identified in Inclusion I3 and do not have an aggregate capacity of non-retail generation greater than 75 MVA (gross nameplate rating);
 - b) Power flows only into the LN and the LN does not transfer energy originating outside the LN for delivery through the LN; and
 - c) Not part of a Flowgate or transfer path: The LN does not contain a monitored Facility of a permanent Flowgate in the Eastern Interconnection, a major transfer path within the Western Interconnection, or a comparable monitored Facility in the ERCOT or Quebec Interconnections, and is not a monitored Facility included in an Interconnection Reliability Operating Limit (IROL).
- **E4** – Reactive Power devices owned and operated by the retail customer solely for its own use.

Note - Elements may be included or excluded on a case-by-case basis through the Rules of Procedure exception process.**

“Bulk Power System” means, depending on the context: (i) Facilities and control systems necessary for operating an interconnected electric energy supply and transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy [++]. (ii) Solely for purposes of Appendix 4E, Bulk Electric System.

“Canadian” means one of the following: (a) a company or association incorporated or organized under the laws of Canada, or its designated representative(s) irrespective of nationality; (b) an agency of a federal, provincial, or local government in Canada, or its designated representative(s) irrespective of nationality; or (c) a self-representing individual who is a Canadian citizen residing in Canada.

“Canadian Entity” means a Registered Entity (or, solely for purposes of Appendix 4D, a Responsible Entity) that is organized under Canadian federal or provincial law.

“Cascading” means the uncontrolled successive loss of System Elements triggered by an incident at any location. Cascading results in widespread electric service interruption that cannot be restrained from sequentially spreading beyond an area predetermined by studies.**

“CCC” means the NERC Compliance and Certification Committee.

“Certification” means, depending on the context, (i) the process undertaken by NERC and a Regional Entity to verify that an entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator and/or Reliability Coordinator; such Certification activities are further described in Section 500 and Appendix 5A of the NERC Rules of Procedure; or (ii) for purposes of ~~Appendix 6~~[Section 600 of the Rules of Procedure](#), an official recognition that indicates the recipient has passed a NERC exam or completed a specified number of Continuing Education Hours.

“Certification Staff” means individuals employed or contracted by NERC who have the authority to make initial determinations of Certification of entities performing reliability functions.

“Certification Team” means a team assembled by a Regional Entity that will be responsible for performing the activities included in the Certification process for an entity pursuant to Appendix 5A.

“Classified National Security Information” means Required Information that has been determined to be protected from unauthorized disclosure pursuant to Executive Order No. 12958, as amended, and/or the regulations of the NRC at 10 C.F.R. §95.35; or pursuant to any comparable provision of Canadian federal or provincial law.

“Clerk” means an individual ~~as~~-assigned by the Compliance Enforcement Authority to perform ~~duties~~[administrative tasks relating to the conduct of hearings as](#) described in Attachment 2, Hearing Procedures, to Appendix 4C.

“Commission” means the Federal Energy Regulatory Commission or FERC.

“Complaint” means an allegation that a Registered Entity violated a Reliability Standard.

“Compliance and Certification Manager” means individual/individuals within the Regional Entity that is/are responsible for monitoring compliance of entities with applicable NERC Reliability Standards.

“Compliance Audit” means a systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the Requirements of applicable Reliability Standards.

“Compliance Audit Participants” means Registered Entities scheduled to be audited and the audit team members.

“Compliance Enforcement Authority” means NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.

“Compliance Enforcement Authority’s Area of Responsibility” means the Compliance Enforcement Authority’s Region. If a Regional Entity is the Compliance Enforcement Authority, the Compliance Enforcement Authority’s Area of Responsibility is shown in Exhibit A to the delegation agreement between the Regional Entity and NERC.

“Compliance Investigation” means a comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.

“Compliance Monitoring and Enforcement Program” or “CMEP” means, depending on the context (1) the NERC *Uniform Compliance Monitoring and Enforcement Program* (Appendix 4C to the NERC Rules of Procedure) or the Commission-approved program of a Regional Entity, as applicable, or (2) the program, department or organization within NERC or a Regional Entity that is responsible for performing compliance monitoring and enforcement activities with respect to Registered Entities’ compliance with Reliability Standards.

“Compliant Date” means the date by which a Responsible Entity is required to be in compliance with an Applicable Requirement of a CIP Standard.

“Confidential Business and Market Information” means any information that pertains to the interests of any entity, that was developed or acquired by that entity, and that is proprietary or competitively sensitive.

“Confidential Information” means (i) Confidential Business and Market Information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; or (vi) Cyber Security Incident Information; provided, that public information developed or acquired by an entity shall be excluded from this definition; or (vii) for purposes of Appendix 4D, any other information that is designated as Confidential Information in Section 11.0 of Appendix 4D.

“Confirmed Violation” means an Alleged Violation for which ~~(1) the Registered e~~Entity has: ~~(4) accepted or not contested the Notice of Alleged Violation and Penalty or Sanction or other notification of the Alleged Violation~~ finding of the violation by a Regional Entity or NERC and will not seek an appeal, 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~~ completed the hearing and appeals process within NERC, or (3) ~~allowed the~~ period ~~time~~ for requesting a hearing or

~~submitting~~ an appeal ~~to~~has expired, or (4) the Registered Entity has executed a settlement agreement pursuant to Section 5.6~~admitted to the violation in a settlement agreement.~~

“Continuing Education Hour” or “CE Hour” means based on sixty clock minutes, and includes at least fifty minutes of participation in a group, ~~independent study~~, or self-study learning activity that meets the criteria of~~as approved by~~ the NERC Continuing Education Program.

“Continuing Education Program Provider” or “Provider” means the individual or organization offering a learning activity to participants and maintaining documentation required by Section 600 of the Rules of Procedure~~Appendix 6~~.

“Coordinated Functional Registration” means where two or more entities (parties) agree in writing upon a division of compliance responsibility among the parties for one or more Reliability Standard(s) applicable to a particular function, and/or for one or more Requirement(s)/sub-Requirement(s) within particular Reliability Standard(s).

“Covered Asset” means a Cyber Asset or Critical Cyber Asset that is subject to an Applicable Requirement.

“Credential” means a NERC designation that indicates the level of qualification achieved (i.e., reliability operator; balancing, interchange, and transmission operator; balancing and interchange operator; and transmission operator).

~~“Credential Maintenance” means to meet NERC CE Hours’ requirements to maintain a valid NERC issued system operator Credential.~~

“Critical Assets” means Facilities, systems, and equipment which, if destroyed, degraded, or otherwise rendered unavailable, would affect the reliability or operability of the Bulk Electric System.**

“Critical Cyber Assets” means Cyber Assets critical to the reliable operation of Critical Assets.**

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

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

“Critical Infrastructure Protection Standard” or “CIP Standard” means any of NERC Reliability Standards CIP-002 through CIP-009.

“Cross-Border Regional Entity” means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.++

“Cyber Assets” means programmable electronic devices and communication networks including hardware, software, and data.**

“Cyber Security Incident” means any malicious or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk Power System.++

“Cyber Security Incident Information” means any information related to, describing, or which could be used to plan or cause a Cyber Security Incident.

“Days”, as used in Appendix 5A with respect to the Registration and Certification processes, means calendar days.

“Delegate” means a person to whom the Senior Manager of a Responsible Entity has delegated authority pursuant to Requirement R2.3 of CIP Standard CIP-003-1 (or any successor provision).

“Director of Compliance” means the Director of Compliance of NERC or of the Compliance Enforcement Authority, as applicable, [or other individual designated by the Compliance Enforcement Authority](#) who is responsible for the management and supervision of Compliance Staff, or his or her designee.

“Disapproval of the Exception Request” or “Disapproval” means the determination by NERC that an Exception Request does not meet the criteria to receive the requested Exception.

“Distribution Factor” means the portion of an Interchange Transaction, typically expressed in per unit that flows across a transmission facility (Flowgate).**

“Distribution Provider” means the entity that provides and operates the “wires” between the transmission system and the end-use customer. For those end-use customers who are served at transmission voltages, the Transmission Owner also serves as the Distribution Provider. Thus, the Distribution Provider is not defined by a specific voltage, but rather as performing the distribution function at any voltage.**

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“Effective Date” means the date, as specified in a notice rejecting or disapproving a TFE Request or terminating an approved TFE, on which the rejection, disapproval or termination becomes effective.

“Electric Reliability Organization” or “ERO” means the organization that is certified by the Commission under Section 39.3 of its regulations, the purpose of which is to establish and enforce Reliability Standards for the Bulk Power System in the United States, subject to Commission review. The organization may also have received recognition by Applicable Governmental Authorities in Canada and Mexico to establish and enforce Reliability Standards for the Bulk Power Systems of the respective countries.

“Element” means any electrical device with terminals that may be connected to other electrical devices such as a generator, transformer, circuit breaker, bus section, or transmission line. An Element may be comprised of one or more components.**

“Eligible Reviewer” means a person who has the required security clearances or other qualifications, or who otherwise meets the applicable criteria, to have access to Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information, as applicable to the particular information to be reviewed.

“End Date” means the last date of the period to be covered in a Compliance Audit.

“Essential Actions” or “Level 3 (Essential Actions)” is a notification issued by NERC in accordance with Section 810.3.3 of the Rules of Procedure.

“Evidentiary Hearing” means a hearing at which one or more Participants submits evidence for the record. A Testimonial Hearing is an Evidentiary Hearing, but an Evidentiary Hearing does not necessarily include the presentation of testimony by witnesses in person.

“Exception” means either an Inclusion Exception or an Exclusion Exception.

“Exception Procedure” means the procedure set forth in Appendix 5C.

“Exception Reporting” means information provided to the Compliance Enforcement Authority by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a System Operating Limit has been exceeded) or enabling the Compliance Enforcement Authority to ascertain the Registered Entity’s compliance.

“Exception Request” means a request made by a Submitting Entity in accordance with Appendix 5C for an Exception.

“Exception Request Form” means the form adopted by each Regional Entity, in accordance with a template provided by NERC, for use by Submitting Entities in submitting Exception Requests; provided, that the Exception Request Form must include Section III.B as adopted by NERC.

“Exclusion Exception” means a determination that an Element that falls within the BES Definition should be excluded from the BES.

“Expiration Date” means the date on which an approved TFE expires.

“Facility” means a set of electrical equipment that operates as a single Bulk Electric System Element (e.g., a line, a generator, a shunt compensator, transformer, etc.)**

“FERC” means the United States Federal Energy Regulatory Commission.

“Final Penalty Amount” means the final, proposed Penalty for violation of a Reliability Standard, determined in accordance with the *Sanction Guidelines*.

“Flowgate” means 1.) A portion of the transmission system through which the Interchange Distribution Calculator calculates the power flow from Interchange Transactions. 2.) A mathematical construct, comprised of one or more monitored transmission Facilities and optionally one or more contingency Facilities, used to analyze the impact of power flows upon the Bulk Electric System.**

“FOIA” means the U.S. Freedom of Information Act, 5 U.S.C. §552.

“Footprint” means the geographical or electric area served by an entity.

“Functional Entity” means an entity responsible for a function that is required to ensure the Reliable Operation of the electric grid as identified in the NERC Reliability Standards.

“Generator Operator” means the entity that operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services.**

“Generator Owner” means an entity that owns and maintains generating units.**

“Hearing Body” or “Regional Entity Hearing Body” means the body established or designated by the Compliance Enforcement Authority~~Regional Entity~~ to conduct hearings and issue decisions concerning disputed compliance matters in accordance with~~pursuant to the~~ Attachment 2, Hearing Procedures, of Appendix 4C.

“Hearing Officer” means, depending on the context, (i) an individual employed or contracted by the Compliance Enforcement Authority and designated by the Compliance Enforcement Authority to preside over hearings conducted pursuant to Attachment 2, Hearing Procedures, of Appendix 4C, or (ii) solely for hearings conducted pursuant to Appendix 4E, (A) a CCC member or (B) an individual employed or contracted by NERC, as designated and approved by the CCC to preside over hearings conducted pursuant to the Hearing Procedures in Appendix E; the Hearing Officer shall not be a member of the Hearing Panel.

“Hearing Panel” means the five person hearing body established as set forth in the CCC Charter on a case by case basis and that is responsible for adjudicating a matter as set forth in Appendix 4E.

“Hearing Procedures” means, depending on the context, (i) Attachment 2 to the NERC or a Regional Entity CMEP, as applicable, or (ii) the hearing procedures of the NERC Compliance and Certification Committee in Appendix 4E.

“Inclusion Exception” means a determination that an Element that falls outside the BES Definition should be included in the BES.

“Interchange” means energy transfers that cross Balancing Authority boundaries.**

“Interchange Authority” means the responsible entity that authorizes the implementation of valid and balanced Interchange Schedules between Balancing Authority Areas, and ensures communications of Interchange information for reliability assessment purposes.**

“Interchange Distribution Calculator” means the mechanism used by Reliability Coordinators in the Eastern Interconnection to calculate the distribution of Interchange Transactions over specific Flowgates. It includes a database of all Interchange Transactions and a matrix of the Distribution Factors for the Eastern Interconnection.**

“Interchange Schedule” means an agreed-upon Interchange Transaction size (megawatts), start and end time, beginning and ending ramp times and rate, and type required for delivery and receipt of power and energy between the Source and Sink Balancing Authorities involved in the transaction.**

“Interchange Transaction” means an agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries.**

“Interconnected Operations Service” means a service (exclusive of basic energy and Transmission Services) that is required to support the Reliable Operation of interconnected Bulk Electric Systems.**

“Interconnection” means a geographic area in which the operation of Bulk Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the Facilities within their control.++

“Interconnection Reliability Operating Limit” means a System Operating Limit that, if violated, could lead to instability, uncontrolled separation, or Cascading outages that adversely impact the reliability of the Bulk Electric System.**

“Interpretation” means an addendum to a Reliability Standard, developed in accordance with the NERC *Standard Processes Manual* and approved by the Applicable Governmental Authority(ies), that provides additional clarity about one or more Requirements in the Reliability Standard.

[“ISO/RTO” means an independent transmission system operator or regional transmission organization approved by the FERC or the Public Utility Commission of Texas.](#)

“Joint Registration Organization” means an entity that registers in the Compliance Registry to perform reliability functions for itself and on behalf of one or more of its members or related entities for which such members or related entities would otherwise be required to register.

“Lead Entity” means the entity that submits Exception Request information that is common to a group of Submitting Entities that are submitting Exception Requests jointly.

“Lead Mediator” means a member of a mediation team formed pursuant to Appendix 4E who is selected by the members to coordinate the mediation process and serve as the mediation team’s primary contact with the Parties.

“Load” means an end-user device or customer that receives power from the electric system.**

“Load-Serving Entity” means an entity that secures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.**

“Mapping” means the process of determining whether a Regional Entity’s Footprint is being served by Registered Entities.

“Mediation Settlement Agreement” means a written agreement entered into by the Parties to a mediation pursuant to Appendix 4E that resolves the dispute.

“Member” means a member of NERC pursuant to Article II of its Bylaws.

“Member Representatives Committee” or “MRC” means the body established pursuant to Article VIII of the NERC Bylaws.

“Mexican Entity” means a Registered Entity that is organized under Mexican law.

“Mitigating Activities” means 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.

“Mitigation Plan” means an action plan, ~~required when a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority decision, settlement agreement, or otherwise, that is~~ developed by the Registered Entity to (1) correct a violation of a Reliability Standard and (2) prevent re-occurrence of the violation.

“NERC-Approved Learning Activity” means training that maintains or improves professional competence and has been approved by NERC for use in its Continuing Education Program.

“NERC Compliance Monitoring and Enforcement Program Implementation Plan” or “NERC Implementation Plan” means the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the Compliance Enforcement Authority in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.

“NERC Compliance Registry,” “Compliance Registry” or “NCR” means a list, maintained by NERC pursuant to Section 500 of the NERC Rules of Procedure and Appendix 5B, the NERC

Statement of Compliance Registry Criteria, of the owners, operators and users of the Bulk Power System, and the entities registered as their designees, that perform one or more functions in support of reliability of the Bulk Power System and are required to comply with one or more Requirements of Reliability Standards.

“NERC Identification Number” or “NERC ID” means a number given to NERC Registered Entities that will be used to identify the entity for certain NERC activities. Corporate entities may have multiple NERC IDs to show different corporate involvement in NERC activities.

“NERC Organization Certification” or “Organization Certification” means the process undertaken by NERC and a Regional Entity to verify that a new entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator, and/or Reliability Coordinator; such certification activities are further described in Section 500 and Appendix 5A of the NERC Rules of Procedure.

“Net Energy for Load” or “NEL” means net generation of an electric system plus energy received from others less energy delivered to others through interchange. It includes system losses but excludes energy required for the storage of energy at energy storage facilities.

“Notice of Alleged Violation [and Proposed Penalty or Sanction](#)” means a notice issued by the Compliance Enforcement Authority to a Registered Entity pursuant to Section 5.3 of Appendix 4C.

“Notice of Completion of Enforcement Action” means a notice issued by the Compliance Enforcement Authority to a Registered Entity, pursuant to Section 5.10 of Appendix 4C, stating that an enforcement action is closed.

“Notice of Confirmed Violation” means a notice issued by the Compliance Enforcement Authority to a Registered Entity confirming the violation of one or more Reliability Standards, ~~as a result of (1) the Registered Entity accepting a Notice of Alleged Violation and the proposed Penalty or sanction, or (2) the finding of a violation through a hearing and appeal, or (3) the expiration of the period for requesting a hearing or an appeal, or (4) the Registered Entity admitting the violation as part of an executed settlement agreement.~~

“Notice of Penalty” means a notice prepared by NERC and filed with FERC, following approval by NERC of a Notice [or other notification](#) of Confirmed Violation or a settlement agreement, stating the Penalty or sanction imposed or agreed to for the Confirmed Violation or as part of the settlement.

“Notice of Possible Violation” means a notice issued by the Compliance Enforcement Authority to a Registered Entity that (1) states a Possible Violation has been identified, (2) provides a brief description of the Possible Violation, including the Reliability Standard Requirement(s) and the date(s) involved, and (3) instructs the Registered Entity to retain and preserve all data and records relating to the Possible Violation.

“NRC” means the United States Nuclear Regulatory Commission.

“NRC Safeguards Information” means Required Information that is subject to restrictions on disclosure pursuant to 42 U.S.C. §2167 and the regulations of the NRC at 10 C.F.R. §73.21-73.23; or pursuant to comparable provisions of Canadian federal or provincial law.

“Open Access Transmission Tariff” means an electronic transmission tariff accepted by the U.S. Federal Energy Regulatory Commission requiring the Transmission Service Provider to furnish to all shippers with non-discriminating service comparable to that provided by Transmission Owners to themselves.**

“Owner” means the owner(s) of an Element or Elements that is or may be determined to be part of the BES as a result of either the application of the BES Definition or an Exception, or another entity, such as an operator, authorized to act on behalf of the owner of the Element or Elements in the context of an Exception Request.

“Part A Required Information” means Required Information that is to be provided in Part A of a Responsible Entity’s TFE Request.

“Part B Required Information” means Required Information that is to be provided in Part B of a Responsible Entity’s TFE Request.

“Participant” means a Respondent and any other Person who is allowed or required by [the Hearing Body or by FERC](#) to participate as an intervenor in a proceeding conducted pursuant to the Hearing Procedures, and as used in the Hearing Procedures shall include, depending on the context, the members of the Compliance Staff that participate in a proceeding or the members of the Certification Staff that participate in a proceeding pursuant to Appendix 4E.

“Party” or “Parties” means a Person or the Persons participating in a mediation pursuant to Appendix 4E.

“Penalty” means and includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity or Respondent to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s or Respondent’s violation and take into consideration any timely efforts made by the Registered Entity or Respondent to remedy the violation.

“Periodic Data Submittals” means modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the Compliance Enforcement Authority on a time frame required by a Reliability Standard or an ad hoc basis.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Planning Authority” means the responsible entity that coordinates and integrates transmission Facilities and service plans, resource plans, and Protection Systems.**

“Point of Delivery” means a location that a Transmission Service Provider specifies on its transmission system where an Interchange Transaction leaves or a Load-Serving Entity receives its energy.**

“Point of Receipt” means a location that the Transmission Service Provider specifies on its transmission system where an Interchange Transaction enters or a generator delivers its output.

“Possible Violation” means the identification, by the Compliance Enforcement Authority, using one of the compliance monitoring and enforcement processes in Section 3.0 of Appendix 4C, of a possible failure by a Registered Entity to comply with a Reliability Standard that is applicable to the Registered Entity.

“Preliminary Screen” means an initial evaluation of evidence indicating potential noncompliance with a Reliability Standard has occurred or is occurring, conducted by the Compliance Enforcement Authority for the purpose of determining whether a Possible Violation exists, and consisting of an evaluation of whether (1) the entity allegedly involved in the potential noncompliance is registered, ~~and~~ (2) the Reliability Standard Requirement to which the evidence of potential noncompliance relates is applicable to a reliability function for which the entity is registered, and (3) if known, the potential noncompliance is not a duplicate of a Possible Violation or Alleged Violation which is currently being processed.

“Probation” means a step in the disciplinary process pursuant to Section 605 of the Rules of Procedure Appendix 6 during which the certificate is still valid. During the probationary period, a subsequent offense of misconduct, as determined through the same process as described above, may be cause for more serious consequences.

“Protected FOIA Information” means Required Information, held by a governmental entity, that is subject to an exemption from disclosure under FOIA (5 U.S.C. §552(e)), under any similar state or local statutory provision, or under any comparable provision of Canadian federal or provincial law, which would be lost were the Required Information to be placed into the public domain.

“Protection System” means protective relays which respond to electrical quantities, communications systems necessary for correct operation of protective functions, voltage and current sensing devices providing inputs to protective relays, station dc supply associated with protective functions (including batteries, battery chargers, and non-battery-based dc supply), and control circuitry associated with protective functions through the trip coil(s) of the circuit breakers or other interrupting devices.**

“Purchasing-Selling Entity” means the entity that purchases, or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities.**

“Reactive Power” means the portion of electricity that establishes and sustains the electric and magnetic fields of alternating-current equipment. Reactive Power must be supplied to most types of magnetic equipment, such as motors and transformers. It also must supply the reactive losses on transmission facilities. Reactive Power is provided by generators, synchronous condensers, or electrostatic equipment such as capacitors and directly influences electric system voltage. It is usually expressed in kilovars (kvar) or megavars (Mvar).**

“Real Power” means the portion of electricity that supplies energy to the Load.**

“Receiving Entity” means NERC or a Regional Entity receiving Confidential Information from an owner, operator, or user of the Bulk Power System or from any other party.

“Recommendation” for purposes of Appendix 5C means the report to NERC containing the evaluation prepared in accordance with section 5.2 of Appendix 5C concerning whether or to what extent an Exception Request should be approved.

“Recommendations” or “Level 2 (Recommendations)” is a notification issued by NERC in accordance with Section 810.3.2 of the Rules of Procedure.

“Region” means the geographic area, as specified in a Regional Entity’s delegation agreement with NERC, within which the Regional Entity is responsible for performing delegated functions.

“Regional Criteria” means reliability requirements developed by a Regional Entity that are necessary to implement, to augment, or to comply with Reliability Standards, but which are not Reliability Standards. Such Regional Criteria may be necessary to account for physical differences in the Bulk Power System but are not inconsistent with Reliability Standards nor do they result in lesser reliability. Such Regional Criteria are not enforceable pursuant to NERC-delegated authorities, but may be enforced through other available mechanisms. Regional Criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents.

“Regional Entity” means an entity having enforcement authority pursuant to 18 C.F.R. § 39.8.+

“Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan” or “Regional Implementation Plan” means an annual plan, submitted by on or about ~~November~~October 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the Regional Entity, (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the Regional Entity’s Annual Audit Plan.

“Regional Reliability Standard” means a type of Reliability Standard that is applicable only within a particular Regional Entity or group of Regional Entities. A Regional Reliability Standard may augment, add detail to, or implement another Reliability Standard or cover matters

not addressed by other Reliability Standards. Regional Reliability Standards, upon adoption by NERC and approval by the Applicable Governmental Authority(ies), shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities or to procedures prescribed by the Applicable Governmental Authority.

“Registered Ballot Body” means that aggregation of all entities or individuals that qualify for one of the Segments approved by the Board of Trustees, and are registered with NERC as potential ballot participants in the voting on proposed Reliability Standards.

“Registered Entity” means an owner, operator, or user of the Bulk Power System, or the entity registered as its designee for the purpose of compliance, that is included in the NERC Compliance Registry.

“Registration” or “Organization Registration” means the processes undertaken by NERC and Regional Entities to identify which entities are responsible for reliability functions within the Regional Entity’s Region.

“Rejection of the Exception Request” or “Rejection” means the determination that an Exception Request is not an eligible Exception Request (i.e., a Request permitted by section 4.1 of Appendix 5C) or does not contain all the Required Information in accordance with section 4.5 of Appendix 5C in order to be reviewed for substance.

“Reliability Coordinator” means the entity that is the highest level of authority who is responsible for the Reliable Operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator’s vision.**

“Reliability Coordinator Area” means the collection of generation, transmission and loads within the boundaries of the Reliability Coordinator. Its boundary coincides with one or more Balancing Authority Areas.**

“Reliability Standard” means a requirement to provide for Reliable Operation of the Bulk Power System, including without limiting the foregoing, requirements for the operation of existing Bulk Power System Facilities, including cyber security protection, and including the design of planned additions or modifications to such Facilities to the extent necessary for Reliable Operation of the Bulk Power System, but the term does not include any requirement to enlarge Bulk Power System Facilities or to construct new transmission capacity or generation capacity. A Reliability Standard shall not be effective in the United States until approved by the Federal Energy Regulatory Commission and shall not be effective in other jurisdictions until made or allowed to become effective by the Applicable Governmental Authority.

“Reliability Standards Development Plan” means the forward-looking plan developed by NERC on an annual basis setting forth the Reliability Standards development projects that are scheduled to be worked on during the ensuing three-year period, as specified in Section 310 of the Rules of Procedure.

“Reliable Operation” means operating the Elements of the Bulk Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or Cascading failures of such system will not occur as a result of a sudden disturbance, including a Cyber Security Incident, or unanticipated failure of system Elements.++

“Remedial Action Directive” means 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.

“Reporting Entity” means an entity required to provide data or information requested by NERC or a Regional Entity in a request for data or information pursuant to Section 1600 of the Rules of Procedure.

“Requirement” means an explicit statement in a Reliability Standard that identifies the functional entity responsible, the action or outcome that must be achieved, any conditions achieving the action or outcome, and the reliability-related benefit of the action or outcome. Each Requirement shall be a statement with which compliance is mandatory.

“Required Date” means the date given a Registered Entity in a notice from the Compliance Enforcement Authority by which some action by the Registered Entity is required.

“Required Information” means, as applicable, either (i) the information required to be provided in a TFE Request, as specified in Section 4.0 of Appendix 4D; or (ii) the information required to be provided in an Exception Request, as specified in section 4.0 of Appendix 5C.

“Reserve Sharing Group” means a group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating reserves required for each Balancing Authority’s use in recovering from contingencies within the group. Scheduling energy from an Adjacent Balancing Authority to aid recovery need not constitute reserve sharing provided the transaction is ramped in over a period the supplying party could reasonably be expected to load generation in (e.g. ten minutes). If the transaction is ramped in quicker, (e.g., between zero and ten minutes), then, for the purposes of disturbance control performance, the areas become a Reserve Sharing Group.**

“Resource Planner” means the entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority area.**

“Respondent” means, depending on the context, the Registered Entity, who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive

that is the basis for the proceeding, whichever is applicable, or the Registered Entity that is the subject of the Certification decision that is the basis for a proceeding under Appendix 4E.

“Responsible Entity” means an entity that is registered for a reliability function in the NERC Compliance Registry and is responsible for complying with an Applicable Requirement, as specified in the “Applicability” section of the CIP Standard.

“Revoked” means a NERC certificate that has been suspended for more than twelve months. While in this state, a certificate holder can not perform any task that requires an operator to be NERC-certified. The certificate holder will be required to pass an exam to be certified again. Any CE Hours accumulated prior to or during the revocation period will not be counted towards Credential Maintenance.

“Revoke for Cause” means a step in the disciplinary process pursuant to [Appendix 6 Section 605 of the Rules of Procedure](#) during which the certificate is no longer valid and requiring successfully passing an exam to become certified. However, an exam will not be authorized until the revocation period expires. CE Hours earned before or during this revocation period will not be counted for maintaining a Credential.

“Scope of Responsibility” means the registered functions of a Planning Authority, Reliability Coordinator, Transmission Operator, Transmission Planner or Balancing Authority and the geographical or electric region in which the Planning Authority, Reliability Coordinator, Transmission Operator, Transmission Planner or Balancing Authority operates to perform its registered functions, or with respect to a Regional Entity, its Regional Entity Region.

“Section I Required Information” means Required Information that is to be provided in Section I of a Submitting Entity’s Exception Request.

“Section II Required Information” means Required Information that is to be provided in Section II of a Submitting Entity’s Exception Request.

“Section III Required Information” means Required Information that is to be provided in Section III of a Submitting Entity’s Exception Request.

“Sector” means a group of Members of NERC that are Bulk Power System owners, operators, or users or other persons and entities with substantially similar interests, including governmental entities, as pertinent to the purposes and operations of NERC and the operation of the Bulk Power System, as defined in Article II, Section 4 of the NERC Bylaws. Each Sector shall constitute a class of Members for purposes of the New Jersey Nonprofit Corporation Act.

“Segment” means one of the subsets of the Registered Ballot Body whose members meet the qualification criteria for the subset.

“Self-Certification” means [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.

“Self-Reporting” means a report by a Registered Entity stating ~~(1)~~ that the Registered Entity believes it has, or may have, violated a Reliability Standard, ~~and (2) the actions that have been taken or will be taken to resolve the violation.~~

“Senior Manager” means the person assigned by the Responsible Entity, in accordance with CIP Standard CIP-003-1 Requirement R2 (or subsequent versions), to have overall responsibility for leading and managing the Responsible Entity’s implementation of, and adherence to, the CIP Standards.

“Sink Balancing Authority” means the Balancing Authority in which the Load (sink) is located for an Interchange Transaction.**

“Source Balancing Authority” means the Balancing Authority in which the generation (source) is located for an Interchange Transaction.**

“Special Protection System” means an automatic protection system designed to detect abnormal or predetermined system conditions, and take corrective actions other than and/or in addition to the isolation of faulted components to maintain system reliability. Such action may include changes in demand, generation (MW and Mvar), or system configuration to maintain system stability, acceptable voltage, or power flows. A Special Protection System does not include (a) underfrequency or undervoltage Load shedding or (b) fault conditions that must be isolated, or (c) out-of-step relaying (not designed as an integral part of a Special Protection System).**

“Spot Checking” means a process in which the Compliance Enforcement Authority requests a Registered Entity to provide information (1) to support the Registered Entity’s Self-Certification, Self-Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards, or (2) as a random check, or (3) in response to ~~events, as described in the Reliability Standards or based on~~ operating problems or system events.

“Staff” or “Compliance Staff” means individuals employed or contracted by NERC or the Compliance Enforcement Authority who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans.

“Strict Compliance” means compliance with the terms of an Applicable Requirement without reliance on a Technical Feasibility Exception.

“Submitting Entity” means (i) an owner, operator, or user of the Bulk Power System or any other party that submits information to NERC or a Regional Entity that it reasonably believes contains Confidential Information or, (ii) solely for purposes of Appendix 5C, the entity that submits an Exception Request in accordance with section 4.0 of Appendix 5C.

“Suspended” means certificate status due to an insufficient number of CE Hours being submitted prior to the expiration of a certificate. While in this state, a certificate holder can not perform any task that requires an operator to be NERC-certified.

“System” means a combination of generation, transmission and distribution components.**

“System Operating Limit” means the value (such as MW, Mvar, amperes, frequency or volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria.**

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies NERC’s or the Compliance Enforcement Authority’s (as applicable) conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Hearing Officer and/or the Hearing Body or Hearing Panel.

“Technical Feasibility Exception” or “TFE” means an exception from Strict Compliance with the terms of an Applicable Requirement on grounds of technical feasibility or technical limitations in accordance with one or more of the criteria in section 3.0 of Appendix 4D.

“Technical Review Panel” means a panel established pursuant to section 5.3 of Appendix 5C.

“Termination of Credential” means a step in the disciplinary process pursuant to [Section 605 of the Rules of Procedure](#)~~Appendix 6~~ whereby a Credential is permanently Revoked.

[“Testimonial Hearing” means an Evidentiary Hearing at which the witness or witnesses on behalf of one or more Participants appears in person to present testimony and be subject to cross-examination.](#)

“TFE Request” means a request submitted by a Responsible Entity in accordance with Appendix 4D for an exception from Strict Compliance with an Applicable Requirement.

“Transmission Customer” means 1. any eligible customer (or its designated agent) that can or does execute a Transmission Service agreement or can and does receive Transmission Service. 2. Any of the following responsible entities: Generator Owner, Load-Serving Entity, or Purchasing-Selling Entity.**

“Transmission Operator” means the entity responsible for the reliability of its “local” transmission system, and that operates or directs the operations of the transmission Facilities.**

“Transmission Owner” means the entity that owns and maintains transmission Facilities.**

“Transmission Planner” means the entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority area.**

“Transmission Service” means services provided to the Transmission Customer by the Transmission Service Provider to move energy from a Point of Receipt to a Point of Delivery.**

“Transmission Service Provider” means the entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable Transmission Service agreements.**

~~“Type of CE Hours” means NERC Approved Learning Activity covering topics from Appendix A to Appendix 6, NERC Reliability Standards and/or simulations for which there is a minimum requirement for Credential Maintenance.~~

“Variance” means an aspect or element of a Reliability Standard that applies only within a particular Regional Entity or group of Regional Entities, or to a particular entity or class of entities. A Variance allows an alternative approach to meeting the same reliability objective as the Reliability Standard, and is typically necessitated by a physical difference. A Variance is embodied within a Reliability Standard and as such, if adopted by NERC and approved by the Applicable Governmental Authority(ies), shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities or to procedures prescribed by the Applicable Governmental Authority.

“Violation Risk Factor” or “VRF” means a factor (lower, medium or high) assigned to each Requirement of a Reliability Standard to identify the potential reliability significance of noncompliance with the Requirement.

“Violation Severity Level” or “VSL” means a measure (lower, moderate, high or severe) of the degree to which compliance with a Requirement was not achieved.

“Wide Area” means the entire Reliability Coordinator Area as well as the critical flow and status information from adjacent Reliability Coordinator Areas as determined by detailed system studies to allow the calculation of Interconnected Reliability Operating Limits.**

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

ATTACHMENT 3A

**REVISED APPENDIX 4B OF THE RULES OF PROCEDURE –
SANCTION GUIDELINES OF THE
*NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION***

CLEAN VERSION



Appendix 4B

Proposed Revisions 5-04-2012
[Incorporates revisions filed with FERC on
January 25, 2012]

Sanction Guidelines
of the
North American
Electric Reliability Corporation

Effective: January 31, 2012

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1. Overview

The North American Electric Reliability Corporation (“NERC”), as the Electric Reliability Organization (“ERO”), and Regional Entities to whom NERC has delegated authority (hereinafter referred to collectively as “Regional Entities” or individually as a “Regional Entity”¹) shall determine and may levy monetary Penalties and non-monetary sanctions and Remedial Action Directives against owners, operators, and users of the Bulk Power System for violations of the Requirements of NERC Reliability Standards approved by the Federal Energy Regulatory Commission (“FERC”) and Applicable Governmental Authorities in Canada and/or Mexico. This document sets out the processes and principles to be followed, and factors that will be considered when determining Penalties, sanctions, or Remedial Action Directives for violations. Collectively these processes, principles and factors are NERC’s Penalties, sanctions, and Remedial Action Directive guidelines.

NERC and the Regional Entities will follow the directives, principles and processes in these Sanction Guidelines when determining Penalties, sanctions, or Remedial Action Directives for a violation. The adjustment factors in these Sanction Guidelines provide NERC and the Regional Entities the flexibility needed to take into account the facts surrounding each violation. The outcome will be Penalties and sanctions that are commensurate to the reliability impact of the violation and to those levied for similar violations, yet appropriately reflective of any unique facts and circumstances regarding the specific violation and violator.

Regional Entities shall follow these Sanction Guidelines when determining Penalties, sanctions, or Remedial Action Directives. NERC shall oversee the Regional Entities’ application of the Sanction Guidelines to ensure that Regional Entities achieve acceptable levels of consistency. NERC’s oversight will ensure that there is acceptable similarity in the degree and type of sanction for violations constituting comparable levels of threat to reliability of the Bulk Power System. NERC may develop reporting requirements or a standard reporting form for use by the Regional Entities for this purpose, as NERC deems necessary or appropriate.

As experience is gained by NERC and the Regional Entities through the use and application of these Sanction Guidelines, NERC will review the Sanction Guidelines and may modify them as NERC deems appropriate or necessary. Authority delegated by NERC to the Regional Entities with respect to Penalties, sanctions, or Remedial Action Directives does not include the authority to modify these Sanction Guidelines.

NERC and the Regional Entities will apply the provisions of this document in accordance with applicable statutory provisions and 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.

Any revision to this document must first be approved by the Board, then by FERC, Applicable Governmental Authorities in Canada or Applicable Governmental Authorities in Mexico prior to becoming effective and applicable within the United States or these Applicable Governmental Authorities’ respective jurisdictions.

¹ For purposes of this document, the term “Regional Entity” shall be treated as either singular or plural, as necessary, to refer to the applicable Regional Entity or Regional Entities.

2. Basic Principles

The following paragraphs identify and discuss the basic principles underpinning why and how NERC and the Regional Entities will determine Penalties, sanctions, and Remedial action Directives for violations of the Requirements of the Reliability Standards.

The order in which the principles are presented in this document does not set or indicate order of precedence.

2.1 Settlement of Compliance Violations

Pursuant to the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, Possible or Alleged Violations of the Reliability Standards may be resolved through settlements reached between NERC, a Regional Entity and the Registered Entity or Entities to whom a Possible or Alleged Violation is attributed by NERC or the Regional Entity. Any provisions within a settlement regarding Penalties or sanctions can supersede any corresponding Penalties or sanctions that would otherwise be determined pursuant to these Sanction Guidelines.

2.2 Timing of Determination of Penalty, Sanction or Remedial Action Directive

The Penalty or sanction for a violation will be determined during the enforcement process in accordance with Section 5.0 of Appendix 4C.

At any time during the enforcement process, including any hearings or appeals, NERC or the Regional Entity may determine that a Remedial Action Directive to the Registered Entity is warranted and, in accordance with Section 7.0 of Appendix 4C, may direct that the Registered Entity implement the Remedial Action Directive.

2.3 Reasonable Relationship to Violation

Penalties and sanctions levied for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation while also reflecting consideration of the other factors specified in these Sanction Guidelines.”

2.4 Use of Factors to Determine Penalties

Penalties levied for a Reliability Standard violation will be based on all facts and information relevant to the violation. To that end, these Sanction Guidelines include factors that NERC and the Regional Entities will consider while determining the Penalty or sanction for a violation.

The presence of some factors in connection with a violation aggravates the seriousness of that violation and should increase the Penalty. Conversely, the presence of certain other factors mitigates the seriousness of the violation and should reduce the Penalty. The absence of an aggravating or mitigating factor will have no impact on the Penalty.

This document identifies many aggravating and mitigating factors that, if present in connection with a violation, should be considered in determining the Penalty or sanction, and describes how these factors should be taken into account. Additional factors not identified in this document may also be considered in determining a Penalty or sanction, as NERC or the Regional Entity deems appropriate under the circumstances. Where additional factors are considered they will be identified, and their use will be justified, in the Notice of Penalty, and the effect of using these factors on the Penalty or sanction determined will be fully and clearly disclosed.

2.5 Multiple Violations

A violation is a failure to meet a Requirement of a Reliability Standard by a Bulk Power System owner, operator or user responsible to comply with that Requirement.

The Registered Entity's noncompliance may involve more than one Reliability Standard or several Requirements of a single Reliability Standard. As such, multiple individual violations may exist when NERC or the Regional Entity determines Penalties or sanctions for a noncompliance .

NERC or the Regional Entity may determine and levy a separate Penalty or sanction upon a violator for each individual violation of a Reliability Standard Requirement. However, where multiple violations related to a single act or common incidence of noncompliance, or where Penalties or sanctions for several unrelated violations by the Registered Entity are being determined at the same time, NERC or the Regional Entity or Entities may determine and issue a single aggregate Penalty or sanction bearing reasonable relationship to the aggregate of the violations. In such a case, the Penalty or sanction will generally be at least as large or expansive as what would be called for individually for the most serious of the violations.

Some entities may register for more than one reliability function in the NERC Compliance Registry (e.g., Transmission Owner, Transmission Operator, Balancing Authority, Generation Operator), and as a result, a single Requirement in certain Reliability Standards may apply to the entity for several of its registered functions. Where an entity performs several registered functions, NERC or the Regional Entity will assess a violation and associated Penalty or sanction against the Registered Entity, not against each function.

2.6 Relation of the Penalty to the Seriousness of the Violation and Violator's Ability to Pay

As stated in Section 2.3 above, Penalties levied for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation. As part of the assessment of the seriousness of the violation, NERC or the Regional Entity shall review the Violation Risk Factors² associated with the violation and the characteristics of the violator's operation or power system. NERC or the Regional Entity may consider the size of the violator. NERC or the Regional Entity will also consider the facts of the violation so that the "actual" size of the violator is appropriately considered. The following are provided as illustrative examples:

- If the violator belongs to a generation and transmission cooperative or joint-action agency, size will be attributed to the particular violator, rather than to that generation and transmission cooperative or joint-action agency.
- If the violator constitutes part of a corporate family the size of the violator will be attributed to that violator alone, in the absence of any facts indicating involvement of the whole corporation or corporate affiliates of the violator.
- If the violator is an entity established solely as a shell to register as subject to one or more Reliability Standards the size of the entity will be disregarded in favor of consideration of the size of the parent entity or any affiliates that NERC or the Regional Entity deems involved and constituting the "actual" size of the violator.

At the request of the violator, NERC or the applicable Regional Entity or Entities may review the Penalty in light of the violator's financial ability to pay the Penalty. Financial ability shall include the financial strength of the Registered Entity as well as its financial structure (e.g., for-profit versus non-profit). Where Penalties are reduced or eliminated NERC or the Regional Entity may consider non-monetary sanctions as alternatives or substitutes to the Penalty, pursuant to Sections 2.12, 2.13 and 2.14, below, of these Sanction Guidelines.

Consideration of the factors described in this subsection is intended to (i) promote that violators are penalized or sanctioned commensurate with the risk or effect that their specific violation of the

² See Section 3.1.1 for a discussion of these factors
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Reliability Standards had or is having on the reliability of the Bulk Power System while also (ii) mitigating overly burdensome Penalties to less consequential or financially-limited entities concurrent with (iii) promoting that no Penalty is inconsequential to the violator to whom it is assessed. Consideration of these factors is intended to result in Penalties levied for violations of Reliability Standards bearing a reasonable relationship to the seriousness of the violation while also addressing the violators' ability to pay the Penalties that are assessed.

2.7 Violation Time Horizon

Reliability Standards involving longer and broader time horizons, such as long-term planning activities, may have a lesser immediate impact and pose less immediate risk to the reliability of the Bulk Power System than Reliability Standards involving shorter and narrower timeframes, such as Registered Entities' conduct in real time. Similarly, Reliability Standards involving longer and broader time horizons typically will provide a longer time period over which to discover and remedy a violation when compared to Reliability Standards involving more immediate activities such as next-day planning, same-day operations or real-time operations. Using a time horizon element in the determination of Penalties for violations provides for recognition of the "more immediate" nature — and hence higher risk — of the threat of some violations as opposed to the lesser-risk "future threat if not corrected" nature of other violations.

NERC or the Regional Entity shall consider the time horizon of the Reliability Standard violated. Violations of Reliability Standards involving immediate or real-time activities will generally incur larger Penalties than violations of Reliability Standards with longer or broader time horizons.

Time horizons inherent in Reliability Standard Requirements are not reflected in their Violation Risk Factors or Violation Severity Levels for the Requirement³. Accordingly, the time horizon element of a violation will be considered when determining the Base Penalty Amount⁴ for the violation.

NERC or the Regional Entity will utilize judgment and will analyze the facts of the violation to determine the time horizon for the violation and its impact on the selection of the Base Penalty Amount. The rationale for the time horizon used and its impact on the setting of the Base Penalty Amount will be provided within the Notice of Penalty issued for the violation.

2.8 Extenuating Circumstances

In unique extenuating circumstances causing or contributing to the violation, such as significant natural disasters, NERC or the Regional Entity may significantly reduce or eliminate Penalties.

2.9 Concealment or Intentional Violation

NERC or the Regional Entity shall always consider as an aggravating factor any attempt by a violator to conceal the violation from NERC or the Regional Entity, or any intentional violation incurred for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the Bulk Power System.

2.10 Economic Choice to Violate

Penalties shall be sufficient to assure that entities responsible for complying with Reliability Standards do not have incentives to make economic choices that cause or unduly risk violations of Reliability Standards, or incidents resulting from violations of the Reliability Standards. Economic choice includes economic gain for, or the avoidance of costs to, the violator. NERC or the Regional Entity shall treat economic choice to violate as an aggravating factor when determining a Penalty.

³ See Section 3.1 for a discussion of these factors.

⁴ See Section 3.2

2.11 No Influence by Outcome of Economic Choice to Violate

Whatever the financial outcome to the Registered Entity making an economic choice to violate a Reliability Standard, such decisions present a risk to reliability and to others, commonly without their knowledge or consent. Penalties levied to violators making an economic choice to violate shall reflect only that the violator made an economic choice to violate a Reliability Standard. The lack of or reduced magnitude of any actual benefit received, or any damage suffered, by the violator as a consequence of making this choice will have no influence upon the determination of the Penalty.

2.12 Non-Monetary Sanctions or Remedial Actions

Enforcement actions taken by NERC or a Regional Entity are not limited to monetary Penalties. NERC or the Regional Entity may apply, at its discretion, non-monetary sanctions including limitations on activities, functions, operations, or placement of the violator's name on a reliability watch list of major violators.

2.13 Non-Exclusiveness of Monetary Penalties or Non-Monetary Sanctions

NERC or the Regional Entity may impose a non-monetary sanction either in lieu of or in addition to a monetary Penalty for the same violation, and vice versa. Imposition of a monetary Penalty or non-monetary sanction for a violation does not preclude the imposition of the other as long as the aggregate Penalty bears a reasonable relation to the seriousness of the violation and other relevant factors.

2.14 Monetization of the Value of Sanctions

A significant element of NERC's oversight of Penalties, sanctions, and Remedial Action Directives determined and levied by Regional Entities is to ensure acceptable similarity in the degree and type of sanction for violations constituting comparable levels of threat to the reliability of the Bulk Power System by similarly situated entities. It is also a requirement and a commitment of NERC and the Regional Entities that Penalties or sanctions levied for the violation of a Reliability Standard bear reasonable relation to the seriousness of the violation. It is easier, more objective, and more transparent to monitor and test for the acceptable similarity of Penalties and sanctions if monetary Penalties or monetized values of sanctions are used as the primary basis of comparison. Similarly, there will be transparency, particularly to those familiar with the power industry, that NERC or the Regional Entity reasonably addressed the seriousness of a violation if the consequences are expressed clearly and quantifiably in monetary terms.

Penalties determined and levied by NERC or Regional Entities will by definition be valued in monetary terms: U.S or Canadian dollars. It is the preference of NERC that non-monetary sanctions imposed either in lieu of or in addition to a Penalty should include disclosure of the monetary value of the sanctions. Generally, NERC or the Regional Entity will first determine the Penalty for the violation and may, at their discretion, introduce sanctions as appropriate alternatives to the Penalty or as additions to a lesser Penalty. However, NERC or the Regional Entity may determine the monetary value of sanctions using other methods.

2.15 Maximum Limitations on Penalties

In the United States, the maximum Penalty amount that NERC or a Regional Entity will assess for a violation of a Reliability Standard Requirement is \$1,000,000 per day per violation. NERC and the Regional Entities will assess Penalties amounts up to and including this maximum amount for violations where warranted pursuant to these Sanction Guidelines.

In Canadian jurisdictions, the maximum monetary Penalty for a Reliability Standard violation is significantly less than \$1,000,000 per day per violation. Further, legislation presently governing certain Canadian jurisdictions does not accommodate the levying of such a Penalty under certain

circumstances, may not accommodate the levying of such a Penalty for all violations, or does not accommodate the levying of any monetary Penalties.

When NERC or a Regional Entity levies a Penalty or proposes a Penalty to Applicable Governmental Authorities with jurisdiction to levy a Penalty, NERC or the Regional Entity shall follow these steps:

- a. NERC or the Regional Entity will initially disregard the Penalty limitations of the Applicable Governmental Authorities, and will determine what the Penalties or sanctions would be pursuant to these Sanction Guidelines.
- b. NERC or the Regional Entity will review the maximum Penalty allowed in the applicable jurisdiction.
- c. NERC or the Regional Entity will set the actual Penalty as the lesser of (i) the Penalty determined pursuant to these Sanction Guidelines and (ii) the maximum Penalty or sanction allowed in the applicable jurisdiction.
- d. If the maximum Penalty allowed in the applicable jurisdiction is lower than the Penalty determined under the Sanction Guidelines, in addition to the legally permissible Penalty, the Notice of Penalty or similar document issued by NERC or the Regional Entity regarding the violation will also list the Penalty that was determined pursuant to these Sanction Guidelines.

Adhering to the above steps will insure that the determination of any Penalty for any violation will produce output that can be directly compared (i.e. without influence of any Penalty limitations or restrictions applicable in certain jurisdictions) with the Penalty determined for any other violation, thus assisting the efforts of NERC and others to ensure that these Sanction Guidelines are uniformly applied and that there is an acceptable level of consistency in their application across North America. Applicable Governmental Authorities may also find such information useful for their determination of the appropriateness of any Penalty or sanction proposed to them to be levied against a violator of the Reliability Standards.

2.16 Frequency and Duration of Violations

As stated in Section 2.15 above, the maximum Penalty that will be imposed in the U.S. for violation of a Reliability Standard is \$1,000,000 per day. However, some Reliability Standards may not support the assessment of Penalties on a “per day, per violation” basis, but instead should have Penalties calculated based on an alternative Penalty frequency or duration. Where NERC or the Regional Entity deems that a monetary Penalty is warranted, or where NERC or the Regional Entity monetizes (Section 2.14) the value of a non-monetary sanction, they shall determine the Penalty or monetized amount consistent with the following:

Multiple Instances of Violation on One Day

The nature of some Reliability Standards includes the possibility that a Registered Entity could violate the same Requirement two or more times on the same day. In this instance NERC and the Regional Entity are not limited to penalizing the violator a maximum of \$1,000,000 per day. NERC or the Regional Entity may deem that multiple violations of the same Requirement occurred on the same day, each of which is subject to the maximum potential Penalty of \$1,000,000 per violation, per day. Also, NERC or the Regional Entity is not constrained to assessing the same Penalty amount for each of the multiple violations, irrespective of their proximity in time.

Cumulative Over Time

Certain Requirements of Reliability Standards are measured not on the basis of discrete acts, but on cumulative acts over time. Reliability Standards that fall into this category generally involve measurements based on averages over a given period.

If a Reliability Standard Requirement measured by an average over time can only be violated once per applicable period, there is risk that a disproportionately mild Penalty might be levied in a situation where the violation was serious and the effects on the Bulk Power System were severe. In the future, as individual Reliability Standards are revised, each Reliability Standard Requirement that is based on an average over time will specify the minimum period in which a violation could occur and how to determine when a violation arises, which may be other than once per applicable period. In the interim until relevant Reliability Standards are so modified, where assessing a Penalty for violation of such a Reliability Standard NERC or the Regional Entity will generally consider that only one violation occurred per measurement period. However, if an average must be measured by a span of time greater than a month, each month of that span shall constitute at a minimum one violation.

Periodically Monitored Discrete Violation

Some Reliability Standards may involve discrete events which are only monitored periodically or which are reported by exception. If a Requirement of such a Reliability Standard states that a discrete event constitutes a violation, then (i) a violation arises when that event occurs and (ii) that violation continues until remedied; and (iii) the violation occurred at the point that the Registered Entity entered into noncompliance with the Reliability Standard, regardless of the monitoring period for the activity or its date of discovery or reporting. For example, if a task required by a Reliability Standard Requirement was not done by the required date, it is irrelevant that monitoring for compliance for the Requirement occurs only on a yearly or other periodic basis; NERC or the Regional Entity will deem a violation to have occurred on the first day of noncompliance and each day thereafter until compliance is effectuated. Similarly, if a discrete event occurs and is not remedied on the date of its occurrence, then NERC or the Regional Entity will deem a violation to have occurred on the day of the first instance of the noncompliance and each day thereafter until the entity is in compliance.

NERC or the Regional Entity may, at its discretion, assess the same Penalty amount for each day that the Registered Entity was in violation of the Reliability Standard Requirement in question.

3. Determination of Monetary Penalties

This Section describes the specific steps that NERC or the Regional Entity will follow to determine the monetary Penalty for a violation⁵. The determination of non-monetary sanctions is discussed in Section 4 of this document.

- Step 1. NERC or the Regional Entity will set the Base Penalty Amount for the violation as discussed in Sections 3.1 and 3.2, below.
- Step 2. NERC or the Regional Entity will adjust the Base Penalty Amount set in Step 1 pursuant to Section 3.3, below. This will result in the Adjusted Penalty Amount.
- Step 3. NERC or the Regional Entity may review the Adjusted Penalty Amount determined in Step 2 in light of the violator's financial ability to pay the Penalty. Also, where applicable, NERC or the Regional Entity will confirm that the Penalty will disgorge unjust profits or economic benefits associated with an economic choice to violate. At the conclusion of this review, NERC or the Regional Entity will set the Final Penalty Amount.

At the discretion of NERC or the Regional Entity, a Penalty may be assessed on a per violation per day basis or with an alternative frequency or duration. Where NERC or the Regional Entity deems that alternative Penalty frequency or duration is warranted, the Notice of Penalty associated with the violation will clearly identify this and provide the rationale for it. Where NERC or the Regional Entity deems that alternative Penalty frequency or duration is warranted, Penalties shall be determined in accordance with section 2.16 of these Sanction Guidelines.

3.1 Initial Value Range of the Base Penalty Amount

NERC or the Regional Entity will determine an initial value range for the Base Penalty Amount by considering the Violation Risk Factor ("VRF") of the Requirement violated and the Violation Severity Level (VSL) assessed for the violation. Using the Base Penalty Amount Table provided in Appendix A NERC or the Regional Entity will look up the initial value range for the Base Penalty Amount by finding the intersection of the violation's VRF and VSL on the table.⁶

3.1.1 Violation Risk Factor

Each Reliability Standard Requirement has been assigned a VRF through the NERC Reliability Standards development process. The VRFs have been defined and approved through the Reliability Standards development process and are assigned to Requirements to provide clear, concise and comparative association between the violation of a Requirement and the expected or potential impact of the violation to the reliability of the Bulk Power System. One of three defined levels of risk is assigned to each Reliability Standards Requirement: Lower VRF; Medium VRF; or High VRF.

3.1.2 Violation Severity Level

VSLs are defined levels of the degree to which a Requirement of a Reliability Standard was violated. Whereas VRFs are determined pre-violation and indicate the relative potential impacts that violations of each Reliability Standard could pose to the reliability of the Bulk Power System, VSLs are assessed post-violation and are an indicator of the severity of the actual violation of the Reliability Standard(s) Requirement(s) in question.

⁵ The text in this section discusses the determination of a single Penalty for an individual violation; however, the process laid out is also applicable to determining the individual Penalties, or a single aggregate Penalty, for multiple violations that are associated with each other as discussed in Section 2.8 of this document.

⁶ As discussed in Section 2.5 of this document, where there is more than one violation, but the violations are sufficiently associated, NERC or the Regional Entity may set a single initial value range that is appropriate in light of the individual VRF/VSL combinations of the violations.

These Sanction Guidelines utilize the VSLs, which have been designated as: Lower, Moderate, High, and Severe.

3.2 Setting of the Base Penalty Amount

NERC or the Regional Entity will set the Base Penalty Amount for the violation. The Base Penalty Amount for the violation may be set at the highest figure of the initial value range determined pursuant to Section 3.1, above. However, NERC or the Regional Entity may set the Base Penalty Amount at or below the lowest figure of the initial value range in light of two specific circumstances regarding the violation and the violator, specifically:

- a. The applicability of the VRF to the specific circumstances⁷ of the violator.
- b. Whether this is an inconsequential first violation by the violator of the Reliability Standard(s) in question.

As noted in Section 2.7, NERC or the Regional Entity will consider the time horizon for the violation when setting the Base Penalty Amount for the violation.

The Penalty amount resulting from this review will be the Base Penalty Amount that is used as the basis for further adjustment pursuant to the factors discussed in the next section (3.3) of this document.

3.2.1 Applicability of the Violation Risk Factor

VRFs are assigned to Reliability Standards Requirements as indicators of the expected risk or harm to the Bulk Power System posed by the violation of a Requirement by a typical or median Registered Entity that is required to comply. NERC or the Regional Entity may consider the specific circumstances of the violator to determine if the violation of the Requirement in question actually produced the degree of risk or harm anticipated by the VRF. If that expected risk or harm was not or would not have been produced, NERC or the Regional Entity may set the Base Penalty Amount to a value it (i) deems appropriate and (ii) is within the initial value range set above pursuant to Section 3.1.

3.2.2 First Violation

If the actual or foreseen impact of the violation is judged to be inconsequential by NERC or the Regional Entity and the violation is the first incidence of violation of the Requirement in question by the violator, NERC or the Regional Entity may at its discretion: (i) set the Base Penalty Amount to a value it deems appropriate within the initial value range set above pursuant to Section 3.1, or (ii) excuse the Penalty for the violation (i.e. set the Base Penalty Amount to \$0).

This relief will generally not be afforded to the violator if NERC or the Regional Entity determines that the violator has a poor internal compliance program or there is other evidence of a poor culture of compliance or compliance record; e.g. the circumstances discussed in Section 3.3.1 have been an aggravating factor in one or more previous Penalties assessed against the violator.

This relief will not be available for consideration in those instances where the violator concealed or attempted to conceal the violation, failed or refused to comply with compliance directives from NERC or the Regional Entity, or intentionally violated for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the Bulk Power System.

⁷ The circumstances of the violator will include but not be limited to: the violator's aggregate and net Load; and interconnections characteristics such as voltage class and transfer ratings.

3.3 Application of Adjustment Factors

Adjustment factors provide an opportunity for NERC or the Regional Entity to adjust the Base Penalty Amount to reflect the specific facts and circumstances material to each violation and violator.

These Sanction Guidelines recognize and require that, as a minimum, NERC or the Regional Entity consider the following:

- a. Repetitive violations and the violator's compliance history
- b. Failure of the violator to comply with compliance directives
- c. Disclosure of the violation by the violator through self-reporting, or as the result of a compliance self-analysis following a Bulk Power System event, and voluntary Mitigating Activities, by the violator
- d. Degree and quality of cooperation by the violator in the violation investigation and in any Mitigating Activities directed for the violation
- e. The presence and quality of the violator's compliance program
- f. Settlement
- g. Any attempt by the violator to conceal the violation
- h. Intentional violations
- i. Extenuating circumstances

NERC or the Regional Entity may also consider other factors it deems appropriate under the circumstances as long as their use is clearly identified and adequately justified. The effect of using these factors must be fully and clearly disclosed in the Notice of Penalty and supporting documents.

3.3.1 Repetitive Violations and Compliance History

If a violator has had repetitive infractions of the same or a closely-related Reliability Standard Requirement, particularly within a time frame defined within the Reliability Standard(s) or deemed appropriate by NERC or the Regional Entity in the absence of a definition of a time frame in the relevant Reliability Standard, NERC or the Regional Entity shall consider an increase to the Penalty. 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.

The reset period or reset time frame of a Reliability Standards Requirement may be defined or implied within a given Reliability Standard as the period of time generally required for a violator to continue operations without violating a Reliability Standard, particularly the initial Reliability Standard violated or a similar Reliability Standard. Expiration of this reset period or reset time frame would serve to negate or minimize consideration of the violator's previous violation history for sanctioning purposes in the event of a subsequent violation(s). NERC or the Regional Entity shall exercise appropriate judgment and discretion in this regard as warranted by the facts and circumstances, particularly where no reset period or reset time frame is specifically set within the Reliability Standard violated. Repeat violations within violation reset periods or reset time frames are aggravating factors in the determination of the Penalty or sanction. A violation history of no violations will produce no mitigation of the Penalty otherwise determined; a violation history of infrequent minor violations of lesser risk Requirements assessed lower VSLs may result in small or no increase; and a history of

more frequent violations or previous violations of higher risk Requirements assessed more severe VSLs will generally incur commensurately larger increases.

3.3.2 Failure to Comply with a Remedial Action Directive or with Agreed Corrective or Mitigating Activity

If the violator has violated Reliability Standard Requirements despite receiving related Remedial Action Directives or despite having agreed to corrective or Mitigating Activities for prior violations, NERC or the Regional Entity shall consider increasing the Penalty.

3.3.3 Disclosure of the Violation Through Self-Reporting and Voluntary Mitigating Activities by the Violator

NERC or the Regional Entity shall consider whether a violator reported the violation by a Self-Report, prior to detection or intervention by NERC or the Regional Entity, and any Mitigating Activities voluntarily undertaken by the violator to correct the noncompliance. As they deem warranted, NERC or the Regional Entity may reduce the violator's Penalty. 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 or Spot Check process unless the severity of the violation is found to be greater than reported by the violator in the Self-Report or Self-Certification.

3.3.4 Degree and Quality of Cooperation

NERC or the Regional Entity shall consider the degree and quality of the violator's cooperation with NERC or the Regional Entity in the investigation of the violation and any Mitigating Activities arising from it. NERC or the Regional Entity may adjust the violator's Penalty as they deem appropriate, which may result in an increase, a decrease or no change to the Penalty.

3.3.5 Presence and Quality of Violator's Internal Compliance Program

NERC or the Regional Entity shall consider the presence and quality of the violator's internal compliance program, if any, and other indicators of the violator's culture of compliance. NERC or the Regional Entity may reduce the violator's Penalty as they deem appropriate. However, NERC or the Regional Entity may not increase a violator's Penalty solely on the grounds that the violator has no internal compliance program or a poor quality program.

3.3.6 Settlement

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.

3.3.7 Violation Concealment and Non-Responsiveness

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. The presumption in such circumstances is to double the Penalty otherwise determined; however, NERC or the Regional Entity will determine the actual increase to the Penalty based on the particular facts and circumstances of the violation. Additionally, NERC or the Regional Entity shall consider an increase to the Penalty if NERC or the Regional Entity determines, based on its review of the facts, that the violator resisted or impeded the discovery and review of a violation.

3.3.8 Intentional Violation

When determining a Penalty NERC or the Regional Entity shall consider if the violator intentionally violated the Reliability Standard for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the Bulk Power System. If the violator engaged in such conduct, a significant increase to the Penalty shall be considered; the presumption in such cases is to double the Penalty otherwise determined. If conduct of this nature has been detected on more than one occasion, NERC or the Regional Entity should assess an even larger increase to the Penalty. NERC or the Regional Entity will determine the actual increase to the Penalty based on the particular facts and circumstances of each case.

NERC or the Regional Entity will consider violations attributable to an economic choice to violate as intentional violations. Any Penalty issued involving conduct of this manner shall at a minimum disgorge any profits or economic benefits the violator acquired as a consequence of the behavior, whenever and to the extent that they can be determined or reasonably estimated.

3.3.9 Extenuating Circumstances

NERC or the Regional Entity will consider any extenuating circumstances regarding the violation that justify reduction or elimination of the Penalty otherwise determined.

3.4 Setting of the Final Penalty Amount

The Adjusted Penalty Amount determined in Step 2 may be reviewed in light of the violator's financial ability to pay the Penalty. If the violation resulted from an economic choice, NERC or the Regional Entity will confirm that the Penalty will disgorge any unjust profits or economic benefits. At the conclusion of this review, if applicable, NERC or the Regional Entity will set the Final Penalty Amount.

3.4.1 Violator's Financial Ability to Pay⁸

At the written request of the violator NERC or the Regional Entity will review the Penalty determined in Step 2 in light of relevant, verifiable information that the violator provides regarding its financial ability to pay. At the conclusion of this review NERC or the Regional Entity may:

1. Reduce the Penalty to an amount that NERC or the Regional Entity deems that the violator has the financial ability to pay, or;
2. Excuse the Penalty amount payable, or;
3. Sustain the Penalty amount determined in Step 2.

If NERC or the Regional Entity reduces or excuses the Penalty, NERC or the Regional Entity shall consider the assessment of appropriate non-monetary sanction(s) as a substitute or an alternative for the Penalty amount otherwise considered appropriate.

3.4.2 Confirmation of Disgorgement of Unjust Profit or Gain

Notwithstanding the application of any other consideration or factor applicable to the determination of a just and reasonable Penalty for the violation, if the violation in question involved an economic choice to violate a Reliability Standard, NERC or the Regional Entity shall confirm that the Penalty meets the requirements set forth in Sections 2.10 and 2.11 of this document.

⁸ NERC anticipates that this will be the primary vehicle for addressing the ability to pay of "not-for-profit" and other similar organizations.

4. Determination of Non-Monetary Sanctions

The imposition of sanctions is not limited to monetary Penalties. Non-monetary sanctions may be applied with the objective of promoting reliability and compliance with the Reliability Standards. Non-monetary sanctions may include limiting activities, functions, or operations, or placing the violator on a reliability watch list of significant violators.

Appendix A: Base Penalty Amount Table

The following lists the Base Penalty amounts corresponding to combinations of Violation Risk Factor and Violation Severity Level.

Violation Risk Factor	Violation Severity Level							
	Lower		Moderate		High		Severe	
	Range Limits		Range Limits		Range Limits		Range Limits	
	Low	High	Low	High	Low	High	Low	High
Lower	\$1,000	\$3,000	\$2,000	\$7,500	\$3,000	\$15,000	\$5,000	\$25,000
Medium	\$2,000	\$30,000	\$4,000	\$100,000	\$6,000	\$200,000	\$10,000	\$335,000
High	\$4,000	\$125,000	\$8,000	\$300,000	\$12,000	\$625,000	\$20,000	\$1,000,000

NOTE: This table describes the amount of Penalty that could be applied for each day that a violation continues, subject to the considerations of Section 2.16 regarding frequency and duration of violations.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

ATTACHMENT 3B

REVISED APPENDIX 4B OF THE RULES OF PROCEDURE –
SANCTION GUIDELINES OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

REDLINED VERSION



Appendix 4B

Proposed Revisions 5-04-2012
[Incorporates revisions filed with FERC on
January 25, 2012]

Sanction Guidelines
of the
North American
Electric Reliability Corporation

Effective: January 31, 2012

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1. Preamble and Overview

The North American Electric Reliability Corporation (“NERC”), as the Electric Reliability Organization (“ERO”), and Regional Entities to whom NERC has delegated authority (hereinafter referred to collectively as “Regional Entities” or individually as a “Regional Entity”¹) shall determine and may levy monetary Penalties and non-monetary sanctions and ~~Remedial Actions Directives~~ against owners, operators, and users of the Bulk Power System for violations of the Requirements of NERC Reliability Standards approved by the Federal Energy Regulatory Commission (“FERC”) and Applicable Governmental Authorities in Canada and/or Mexico. This document sets out the processes and principles to be followed, and factors that will be considered when determining Penalties, sanctions, or ~~Remedial Actions Directives~~ for violations. Collectively these processes, principles and factors are NERC’s Penalties, sanctions, and ~~Remedial Action Directive~~ guidelines.

NERC and the Regional Entities will ~~exclusively~~ follow the directives, principles and processes in these Sanction Guidelines when determining Penalties, sanctions, or ~~Remedial Action Directives~~ for a violation. ~~However, The~~ adjustment factors ~~in these Sanction Guidelines are also~~ provided ~~to afford~~ NERC ~~or and~~ the Regional ~~Entities Entity~~ the flexibility needed to ~~accommodate take into account~~ the facts surrounding each violation. ~~In this manner, rigid prescription of specific Penalty formulae can be avoided at the same time that appropriate limitations on the degree of discretion and flexibility available to address each violation on its merits is maintained.~~ The outcome will be ~~Penalties and sanctions remedies~~ that are commensurate ~~and fair compared~~ to the reliability impact of the violation and to ~~those remedies~~ levied for similar violations, yet appropriately reflective of any unique facts and circumstances regarding the specific violation and violator.

~~The adjustment factors established in this document are generally consistent with those listed in the FERC Policy Statement on Enforcement issued on October 20, 2005. However, discussion of the factors presented in this document is not exhaustive as other facets of these factors, or other additional factors not discussed herein, may also be considered to determine a given Penalty, sanction, or remedial action, as NERC or the Regional Entity deems appropriate under the circumstances.~~

Regional Entities shall follow these ~~Sanction g~~Guidelines ~~to when~~ determine ~~ing~~ Penalties, sanctions, or ~~Remedial Actions Directives~~. NERC shall oversee the Regional Entities’ application of the ~~Sanction g~~Guidelines to ensure that ~~Regional Entities achieve~~ acceptable levels of consistency ~~are achieved~~. NERC’s oversight will ~~also ensure comparable outcomes, i.e.~~ that there is acceptable similarity in the degree and type of sanction for violations constituting comparable levels of threat to reliability of the Bulk Power System. ~~In order to facilitate this oversight, Regional Entities’ reporting to NERC of Penalties and sanctions they have determined will be thorough and in sufficient detail that NERC can understand and reasonably replicate the outcomes reached;~~ NERC may develop reporting requirements or a standard reporting form for use by the Regional Entities for this purpose, as NERC deems necessary or appropriate.

As experience is gained by NERC and the Regional Entities through the use and application of these ~~Sanction g~~Guidelines, NERC will review the ~~Sanction g~~Guidelines and may modify them as NERC deems appropriate or necessary. Authority delegated by NERC to the Regional Entities with respect to Penalties, sanctions, or ~~Remedial Actions Directives~~ does not include the authority to modify these ~~Sanction g~~Guidelines.

NERC and the Regional Entities will apply the provisions of this document in accordance with applicable statutory provisions and the regulations, orders, and statements of policy of FERC and other Applicable

¹ For purposes of this document, the term “Regional Entity” shall be treated as either singular or plural, as necessary, to refer to the applicable Regional Entity or Regional Entities.

Governmental Authorities that are applicable to the determination and imposition of Penalties and sanctions for violations of Reliability Standards in the respective jurisdictions.

Any revision to this document ~~or to the principles and factors identified or addressed within it~~ must first be approved by the ~~NERC~~ Board, then by FERC, Applicable Governmental Authorities in Canada or Applicable Governmental Authorities in Mexico prior to becoming effective and applicable within the United States or these Applicable Governmental Authorities' respective jurisdictions.

2.Document Scope and Exclusions

This document identifies and discusses the processes and principles to be followed, and factors that will be considered to determine Penalties, sanctions, or remedial actions for violations of the Reliability Standards.

This document notes but does not otherwise address the progression of actions and steps that NERC or the Regional Entity will follow to process a violation from its initial incoming status upon discovery as a Possible Violation, through to its possible final determination as a Confirmed Violation. This is set out in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure.

This document notes but does not otherwise address how a Possible Violation or Alleged Violation is reviewed in order to confirm or dismiss it. NERC's process and requirements for this review are set out in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure. Regional Entities will undertake such reviews using the processes and requirements set out in the NERC Compliance Monitoring and Enforcement Program.

This document notes but does not otherwise address the processes and procedural steps by which a Confirmed Violation can be appealed, or by which a Penalty, sanction, or remedial action determined and levied for a violation can be appealed. These procedures are set out in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, and applicable Regional Entity program documents.

The NERC Compliance Monitoring and Enforcement Program provides for the possibility of settlements within NERC or Regional Entity Compliance Monitoring and Enforcement Programs. This document makes reference to settlements too, but does not address them further.

3.2. Basic Principles

The following paragraphs identify and discuss the basic principles underpinning why and how NERC and the Regional Entities will determine Penalties, sanctions, and Remedial actions Directives for violations of the Requirements of the Reliability Standards.

The principles are unique and complimentary; the order in which they the principles are presented in this document does not set or indicate order of precedence.

3.1 Necessary Element of NERC Compliance Program

Primary objectives of NERC as the ERO include the promotion and enforcement of compliance with the Reliability Standards by owners, operators, and users of the Bulk Power System; Reliability Standards made mandatory by duly authorized legislative bodies in the U.S and Canada, and designed to maintain and promote the reliability of the two countries' shared power grids. Consistent with these objectives, NERC and the Regional Entities will monitor and act to verify compliance with Reliability Standards' Requirements; however, beyond monitoring and acting only to verify compliance, NERC and the Regional Entities will also hold Bulk Power System owners, operators, and users—or their delegates—accountable for Confirmed Violations. This accountability will include determination and the possible levying of Penalties, sanctions, or remedial actions:

Penalties, sanctions, and remedial actions are valid and necessary mechanisms to NERC and the Regional Entities for the enforcement and promotion of compliance to the Reliability Standards, in part because they can:

- a. promote compliance behavior;
- b. provide deterrence to future incidents, actions or situations of noncompliance by the violator or others;
- c. implement actions that will promptly correct behavior;
- d. disgorge benefits that may or may have accrued to a violator as a consequence of violating;
- e. visit upon a violator some portion of any damage their violation may or may have visited upon others.

Accordingly, the determination and potential levying of appropriate Penalties, sanctions, or remedial actions by NERC or the Regional Entity upon those responsible for violations shall be a required step within the NERC and Regional Entity Compliance Monitoring and Enforcement Programs.

3.2.1 Settlement of Compliance Violations

NERC and the Regional Entities shall maintain the reliability of the Bulk Power System by enforcing compliance with NERC and Regional Reliability Standards. NERC and Regional Entity Compliance Monitoring and Enforcements Programs will lay out how NERC and the Regional Entities will do this. In particular and by necessity, elements of these programs regarding the confirmation of violations, the determination and levying of Penalties, sanctions, or remedial actions, and appeals are rigid and legalistic in form and nature in order to respect the basic tenets of due process and natural justice inherent within United States and Canadian justice systems, respectively, upon which they are being based. However, absolute adherence to the Compliance Monitoring and Enforcement Programs, to the exclusion of other options, may not be the most appropriate, efficient or desirable means by which to achieve the end goal in all circumstances, to all entities party to a violation.

Pursuant to As set out in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, Possible or Alleged Violations of the Reliability Standards may be resolved/dealt with through settlements reached between NERC, a Regional Entity and the Registered Entity or Entities to whom a Possible, or Alleged, or Confirmed Violation is attributed to by NERC or the Regional Entity. Any provisions made within a settlement regarding Penalties, or sanctions, or

remedial actions can supersede any corresponding Penalties, or sanctions that would otherwise be determined pursuant to these Sanction Guidelines.

3.3 Settlement Request

Any Registered Entity found in or being investigated for a violation may request settlement negotiations at any time, including prior to issuance of a Notice of Alleged Violation; however, NERC or the Regional Entity may decline to enter into or continue settlement negotiations after the Possible Violation or Alleged Violation becomes a Confirmed Violation.

3.4 Settlement Effect on Continuation of Determination of Penalties, Sanctions, or Remedial Actions

Until a settlement is finalized or parties to that settlement agree otherwise, NERC or the Regional Entity may continue activities and actions towards the determination and levying of a Penalty, sanction, or remedial action that would otherwise be applicable pursuant to these guidelines, or that will be applicable if the settlement is not finalized.

3.5.2.2 Timing of Determination of Penalty, Sanction or Remedial Action Directive

All Possible Violations and Alleged Violations will be reviewed by NERC or the Regional Entity with the outcome that either the violation will be confirmed or the violation will be dismissed.

The Penalty, or sanction, or other remedial action for a violation will be determined during the enforcement process in accordance with Section 5.0 of Appendix 4C when the violation becomes a Confirmed Violation or is resolved as part of a settlement agreement.

At any time during the enforcement process, including any confirmation review, hearings, or appeals, NERC or the Regional Entity may determine that a Remedial Action Directive to the Registered Entity is warranted and, in accordance with Section 7.0 of Appendix 4C, by the subject Registered Entity of the review, hearing, or appeals. NERC or the Regional Entity may direct that the Registered Entity implement the such Remedial Actions Directive be undertaken by the subject Registered Entity at any time, including prior to confirmation of a violation, and without regulatory approval.

3.6 Determining Party

The determination of Penalty, sanction or other remedial action for a violation will generally be undertaken by the same entity determining the violation to be a Confirmed Violation, but subject to review by NERC if the determination is made by a Regional Entity.

3.7 No Influence of Penalty, Sanction or Remedial Action upon Violation Confirmation Process

The Penalty, sanction, or remedial action determined for a violation will not influence the outcome of the Regional Entity's or NERC's confirmation review of the violation. In particular, if the determination of Penalty, sanction, or remedial action for a probable violation is being undertaken by the same entity undertaking the confirmation review, the entity will insure that there is sufficient separation, in such terms as time, process, personnel or the like, to preclude that the Penalty, sanction, or remedial action determined influences the outcome of the confirmation review.

3.8.2.3 Reasonable Relationship to Violation

Penalties, and sanctions, and remedial actions levied or applied for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation while also reflecting consideration of the other factors specified in that these Sanction Guidelines direct to take into account. In the United States, the legislation establishing mandatory enforceable Reliability Standards and the ERO requires that "Any penalty imposed ... shall; (A) bear a reasonable relation to

the seriousness of the violation; and (B) take into consideration the efforts of the user, owner, or operator to remedy the violation in a timely manner².”

3.92.4 Use and Facets of Factors to Determine Penalties

Penalties levied for a given Reliability Standard violation will be based on all facts and ~~other~~ information relevant to the violation incident or situation. To that end, these Sanction Guidelines include factors ~~which that~~ NERC and the Regional Entities will consider while determining the Penalty or sanction for a violation to be levied.

~~NERC considers, and these guidelines direct, that t~~The presence of some factors in connection with a violation aggravates the seriousness of that violation and should ~~cause an increase or expansion of~~ the Penalty to be levied. Conversely, the presence of ~~some certain~~ other factors mitigates ~~that the~~ seriousness of the violation and should ~~cause a decrease or reduction of~~ reduce the Penalty to be levied. ~~Also, some factors may mitigate or aggravate, and should have commensurate impact. NERC considers, and these guidelines direct, that t~~The absence of an aggravating or mitigating factor will have no impact, ~~as opposed to a mitigating or aggravating impact, respectively, to a~~ on the Penalty.

This document identifies many aggravating and mitigating ~~presents many of the relevant facets of the~~ factors that, if present in connection with a violation, should be considered in determining the Penalty or sanction, and describes how these factors should be taken into account ~~included in these guidelines. However, additional facets of these factors, or a~~ Additional factors not identified in this document ~~discussed herein,~~ may also be considered into determining a given Penalty, or sanction, ~~or remedial action,~~ as NERC or the Regional Entity deems appropriate under the circumstances. Where additional factors ~~or facets~~ are considered used they will be identified, and their use will be justified, in the Notice of Penalty, and the. ~~The~~ effect of using these factors ~~or facets~~ on the Penalty, or sanction, ~~or remedial action~~ determined will also be fully and clearly disclosed.

3.402.5 Multiple Violations

A violation is a failure ~~or inadequacy~~ to meet a Requirement of a Reliability Standard by a Bulk Power System owner, operator or user party responsible to comply with that Requirement.

The ~~failure or inadequacy of a violator to~~ Registered Entity's noncompliance ~~comply~~ may involve more than one Reliability Standard or several Requirements of a single Reliability Standard. ~~As~~ such, multiple individual violations may exist be in play when NERC or the Regional Entity determines Penalties, or sanctions, ~~or remedial actions~~ for ~~an incident or situation of~~ noncompliance are being determined.

~~Strictly speaking,~~ NERC or the Regional Entity can may determine and levy a separate Penalty or sanction, ~~or direct remedial action,~~ upon a violator for each individual violation of a Reliability Standard Requirement. However, where in instances of multiple violations related to a single act or common incidence of noncompliance, or where Penalties or sanctions for several unrelated violations by the Registered Entity are being determined at the same time, NERC or the Regional Entity or Entities will generally may determine and issue a single aggregate Penalty, or sanction, ~~or Remedial Action Directive~~ bearing reasonable relationship to the aggregate of the related violations. In such a case, ~~The~~ Penalty, or sanction, ~~or remedial action will not be that determined individually for the least serious of the violations; it~~ will generally be at least as large or expansive as what would be called for individually for the most serious of the violations.

Some entities may ~~be registered as being responsible~~ for more than one reliability function in the NERC Compliance Registry (e.g., Transmission Owner, Transmission Operator, Balancing Authority, Generation Operator), and as a result, a single Requirement in ~~some certain~~ Reliability Standards may apply to the responsible entity for several of its registered functions. Where an entity

² H.R. 6, Energy Policy Act of 2005, Section 215, Paragraph e, subparagraph 6.

~~performs~~ several ~~registered~~ functions ~~are performed by the same Registered Entity, NERC or the Regional Entity will assess~~ a violation ~~and associated Penalty or sanction will be assessed~~ against the Registered Entity, not against each function.

3.142.6 Relation of the Penalty to the Seriousness of the Violation and Violator's Ability to Pay

As ~~stated discussed~~ in Section ~~3.8;2.3~~ above, Penalties levied for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation. ~~As part of the assessment of the seriousness of the violation, NERC or the Regional Entity shall~~~~The seriousness of a given violation by a given violator shall be assessed by~~ review ~~of the applicability of~~ the Violation Risk Factors³ associated with the violation ~~and to~~ the characteristics of the violator's operation or power system. ~~NERC or the Regional Entity may consider the size of the violator. Size is a characteristic of a violator's operation or system. The size of the violator can be considered in the assessment but shall not be the only characteristic considered. Where size is considered in such a review the facts relating to the violation in question will be reviewed. NERC or the Regional Entity will also consider the facts of the violation so such~~ that the "actual" size of the violator is ~~properly discerned and~~ appropriately considered. ~~The following are provided as illustrative examples:~~

- If the violator belongs to a generation and transmission cooperative or joint-action agency, size will be attributed to the particular violator, rather than to that generation and transmission cooperative or joint-action agency.
- If the violator constitutes part of a corporate family the size of the violator will be attributed to that violator alone, in the absence of any facts indicating involvement of the whole corporation or corporate affiliates of the violator.
- If the violator is an entity established solely as a shell to register as subject to one or more Reliability Standards the size of the entity will be disregarded in favor of consideration of the size of ~~the~~ parent entity or any affiliates that NERC or the Regional Entity deems involved and constituting the "actual" size of the violator.

At the request of the violator, NERC or the ~~applicable~~ Regional Entity ~~or Entities~~ may review the Penalty in light of the violator's financial ability to pay the Penalty. Financial ability shall include ~~both~~ the financial strength of the Registered Entity as well as its ~~financial~~ structure (e.g., for-profit versus non-profit). Where Penalties are reduced or eliminated NERC or the Regional Entity ~~may~~~~shall~~ consider non-monetary sanctions ~~or remedial action~~ as alternatives or substitutes to the Penalty, pursuant to Sections ~~3.17, 3.18 and 3.19~~~~2.12, 2.13 and 2.14~~, below, of ~~these Sanction Guidelines~~~~this document~~.

~~The above actions will: (i) promote that violators are penalized or sanctioned commensurate with the risk or effect that their specific violation of the Reliability Standards had or is having to the reliability of the Bulk Power System while also; (ii) mitigating overly burdensome Penalties to less consequential or financially limited entities concurrent with; (iii) promoting that no Penalty is inconsequential to the violator to whom it is assessed. This will promote that Penalties levied for violations of Reliability Standards bear a reasonable relation to the seriousness of the violation while also addressing violators' ability to pay the Penalties they are assessed. Consideration of the factors described in this subsection is intended to (i) promote that violators are penalized or sanctioned commensurate with the risk or effect that their specific violation of the Reliability Standards had or is having on the reliability of the Bulk Power System while also (ii) mitigating overly burdensome Penalties to less consequential or financially-limited entities concurrent with (iii) promoting that no Penalty is inconsequential to the violator to whom it is assessed. Consideration of these factors is intended to result in Penalties levied for violations of Reliability Standards bearing a reasonable relationship to the seriousness of the violation while also addressing the violators' ability to pay the Penalties that are assessed.~~

³ See Section ~~4 Part 4.14~~~~3.1.1~~ for a discussion of these factors
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3.122.7 Violation Time Horizon

Reliability Standards involving longer and broader time horizons, such as long-term planning activities, may have a lesser immediate impact and pose less immediate risk to the reliability of the Bulk Power System than Reliability Standards ~~addressing~~ involving shorter and narrower timeframes, such as Registered Entities' conduct in real time. Similarly, Reliability Standards involving longer and broader time horizons typically will provide a longer time period over which to discover and remedy a violation when compared to Reliability Standards ~~addressing~~ involving more immediate activities such as next-day planning, same-day operations or real-time operations. Using a time horizon element in the determination of Penalties for violations provides for recognition of the "more immediate" nature — and hence higher risk — of the threat of some violations as opposed to the lesser-risk "future threat if not corrected" nature of other violations.

~~NERC or the Regional Entity Penalties levied for the violation of a Reliability Standard~~ shall consider the time horizon of the Reliability Standard violated; ~~violations of Reliability Standards involving more~~ immediate or real-time activities will generally incur larger Penalties than violations of Reliability Standards with longer or broader time horizons.

Time horizons inherent in Reliability Standard Requirements are not reflected in their ~~assigned~~ Violation Risk Factors or Violation Severity Levels for the Requirement⁴. Accordingly, the time horizon element of a violation will be considered when determining the Base Penalty Amount⁵ for the violation.

~~NERC or the Regional Entity will utilize judgment and will analyze the facts of the violation to determine the time horizon for the violation considered and its impact on the selection of the Base Penalty Amount for the violation will be decided upon by NERC or the Regional Entity based upon judgment and the facts of the violation.~~ The rationale for the time horizon used and its impact on the setting of the Base Penalty Amount will be ~~documented by NERC or the Regional Entity and~~ provided within the Notice of Penalty issued for the violation.

3.132.8 Extenuating Circumstances

In unique extenuating circumstances causing or contributing to the violation, such as significant natural disasters, NERC or the Regional Entity may significantly reduce or eliminate Penalties ~~may be significantly reduced or eliminated~~.

3.142.9 Concealment or Intentional Violation

~~NERC or the Regional Entity Penalties levied for the violation of a Reliability Standard~~ shall always consider as an aggravating factor take into consideration any attempt by a violator to conceal the violation from NERC or the Regional Entity, or any intentional violation incurred for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the Bulk Power System.

3.152.10 Economic Choice to Violate

~~Owners, operators, and users of the Bulk Power System may be presented with situations or circumstances where compliance with the Reliability Standards preclude or reduce an economic gain that could be realized by violating the Reliability Standards.~~ Penalties shall be sufficient to assure that entities responsible for complying with Reliability Standards do not have incentives find it attractive to make economic choices that cause or unduly risk violations ~~to~~ of Reliability Standards, or risk or cause incidents resulting from violations of the Reliability Standards. Economic choice includes economic gain for, or the avoidance of costs to, the violator. NERC or the Regional Entity shall treat economic choice to violate as an aggravating factor when determining a Penalty Penalties levied to violators who have made such a choice shall reflect this aspect of the violation.

⁴ See Section ~~4 Part 4.113.1~~ for a discussion of these factors.

⁵ See Section ~~4 Part 4.3.2~~

3.162.11 No Influence by Outcome of Economic Choice to Violate

Economic choices to violate are generally made for the violator's own potential gain, but making such a choice does not always result in all potential gains being realized or may result in damage or loss. However, irrespective of whatever the financial outcome to the Registered Entity making an economic choice to violate a Reliability Standard, such decisions present a risk to others' reliability and to others, commonly without either their knowledge or consent. Penalties levied to violators making an economic choice to violate shall reflect only that the violator made an economic choice to violate a Reliability Standard. The lack of or reduced magnitude of any actual benefit received, or any damage suffered, by the violator as a consequence of making this choice will have no influence upon the determination of the Penalty to be levied.

3.172.12 Non-Monetary Sanctions or Remedial Actions

Enforcement actions taken by NERC or a Regional Entity are not limited to monetary Penalties; NERC or the Regional Entity may apply, at their discretion, non-monetary sanctions or remedial actions, including limitations on activities, functions, operations, or placement of the violator's name on other appropriate sanctions, including the establishment of a reliability watch list composed of major violators.

3.182.13 Non-Exclusiveness of Monetary Penalties or Non-Monetary Sanctions

NERC or the Regional Entity may impose a non-monetary sanction either in lieu of or in addition to a monetary Penalty imposed for the same violation, and vice versa. Imposition of a monetary Penalty or non-monetary sanction for a violation does not preclude the imposition of the other as long as, in combination, the aggregate Penalty continues to bear a reasonable relation to the seriousness of the violation and other relevant factors.

3.192.14 Monetization of the Value of Sanctions

A significant element of NERC's oversight of Penalties, sanctions, and Remedial Action Directives determined and levied by Regional Entities is to ensure acceptable similarity in the degree and type of sanction for violations constituting comparable levels of threat to the reliability of the Bulk Power System by similarly situated entities. It is also a requirement and a commitment of NERC and the Regional Entities that Penalties, or sanctions, or remedial actions levied or applied for the violation of a Reliability Standard bear reasonable relation to the seriousness of the violation. Specifically with respect to Penalties and sanctions, it is intuitive that it will be easier, more objective, and more transparent to monitor and test for the acceptable similarity of Penalties and sanctions if (monetary) Penalties or monetized values of sanctions determined for violations are used as the primary basis of comparison, versus comparisons made on the basis of other (non-monetized) considerations. Similarly, there will be strong intuitiveness and transparency, particularly to those interested but not strongly familiar with the power industry, that NERC or the Regional Entity reasonably addressed the seriousness of a violation if the consequences for it to the violator are determined and can be expressed clearly and quantifiably in monetary terms.

Penalties determined and levied by NERC or Regional Entities will by definition be valued in monetary terms: U.S. or Canadian dollars. It is the preference of NERC that (non-monetary) sanctions imposed either in lieu of or in addition to a Penalty should include disclosure of the monetary value of that the sanctions represent to the violator. Generally, NERC or the Regional Entity will first determine the Penalty for the violation pursuant to these guidelines and may, at their discretion, introduce then the sanctions to be levied as appropriate alternatives to that the Penalty or as additions to a lesser Penalty. However, NERC or the Regional Entity may determine the monetary value of sanctions may be determined directly (e.g. without first determining a Penalty amount) and monetized using other methods.

NERC does not have a preference between Penalties and sanctions for violations. The preference expressed here will support ensuring comparability of outcomes regarding application of these guidelines and the promotion of reasonable relationship between the seriousness of a violation and the sanctions, or Penalties and sanctions, levied for it.

3.202.15 Maximum Limitations on Penalties

Penalties are direct, monetary judgments levied against a violator by NERC or the Regional Entity for the violation of Requirements of the Reliability Standards. In contrast, sanctions will impose limitations or restrictions of some kind that may result in economic or other impacts to the violator, and remedial actions are directives by NERC or a Regional Entity to the violator regarding the correction of conditions, practices or any other relevant action or activity underlying the noncompliance(s) involved.

In the United States, the Federal Power Act allows for the imposition of civil penalties of up to \$1,000,000 per day per violation. NERC and the Regional Entities draw their authority to levy Penalties from the Federal Power Act; accordingly this figure is and can be understood as the maximum monetary Penalty that NERC or Regional Entities are authorized to levy. However, as this legislation also requires that “[a]ny penalty imposed ... shall: (A) bear a reasonable relation to the seriousness of the violation; and (B) take into consideration the efforts of the user, owner, or operator to remedy the violation in a timely manner⁶” *entities required to comply with the Reliability Standards must also understand that* In the United States, the maximum Penalty amount that NERC or a Regional Entity will assess for a violation of a Reliability Standard Requirement is \$1,000,000 per day per violation. NERC and the Regional Entities will ~~be obligated to~~ assess Penalties amounts up to and including ~~the~~this maximum amount for violations where warranted pursuant to these ~~Sanction~~ gGuidelines.

In Canadian jurisdictions, the maximum monetary Penalty ~~potentially assessable~~ for a Reliability Standard violation is significantly less than ~~\$1,000,000 per day per violation~~the amount allowed in the United States under the Federal Power Act. Also Further, legislation presently governing ~~certain~~some Canadian jurisdictions does not accommodate the levying of such a Penalty under ~~certain~~some circumstances, may not accommodate the levying of such a Penalty for all violations, or does not accommodate the levying of any monetary Penalties.

When NERC or a Regional Entity levies a Penalty ~~may be levied~~, or proposes a Penalty to Applicable Governmental Authorities with jurisdiction to ~~be levied~~ a Penalty, NERC or the Regional Entity shall~~the~~ following ~~these~~ steps ~~will be followed~~:

- a. NERC or the Regional Entity will initially disregard the Penalty limitations of the Applicable Governmental Authorities ~~with jurisdiction~~, and will determine what the Penalties or sanctions would be pursuant to these ~~s~~Sanction gGuidelines ~~only~~.
- b. NERC or the Regional Entity will review the maximum Penalty allowed in the applicable~~by the Applicable Governmental Authorities with~~ jurisdiction.
- c. NERC or the Regional Entity will set the actual Penalty ~~to be levied, or proposed to the Applicable Governmental Authorities with jurisdiction to be levied~~, as the lesser of (i) the Penalty~~that~~ determined pursuant to these Sanction gGuidelines and (ii) the maximum Penalty or sanction allowed in~~by~~ the Applicable jurisdiction~~Governmental Authorities~~.
- d. If ~~the lesser Penalty is~~ the maximum Penalty allowed by~~in~~ the Applicable jurisdiction is lower than the Penalty determined under the Sanction Guidelines, in addition to the legally permissible Penalty~~Governmental Authorities~~, the Notice of Penalty or similar document issued by NERC or the Regional Entity regarding the violation will also list the Penalty that was determined pursuant to these Sanction gGuidelines.

⁶ H.R. 6, Energy Policy Act of 2005, Section 215, Paragraph e, subparagraph 6.

Adhering to the above steps will insure that ~~the result of~~ the determination of any Penalty for any violation will produce output that can be directly compared (i.e. without influence of ~~local Applicable Governmental Authorities' any~~ Penalty limitations or restrictions ~~applicable in certain jurisdictions~~) with the Penalty determined for any other violation, ~~thus~~ assisting ~~the~~ efforts of NERC and others to ensure that these ~~Sanction Guidelines~~ are uniformly applied and that there is an acceptable level of consistency in their ~~ir~~ application ~~of these sanction guidelines~~ across North America. Applicable Governmental Authorities ~~with jurisdiction~~ may also find such information useful for their determination of the appropriateness of any Penalty or sanction proposed to them to be levied ~~against a violator of the Reliability Standards. Similarly, policy and legislative bodies may find such information of value to the review or development of arrangements addressing such matters.~~

3.212.16 Frequency and Duration of Violations

~~Section 316A of the Federal Power Act [16 U.S.C. § 825o-1(b)], as amended by the Energy Policy Act of 2005, provides that “any person who violates any provision of Part II of this title or any provision of any rule or order thereunder shall be subject to a civil penalty of not more than \$1,000,000 for each day that such violation continues.”~~

~~FERC Order No. 672 interprets this statement as setting a cap on the monetary Penalties that the Commission, NERC and Regional Entities can impose under FPA section 215. FERC has referred to this statutory provision as imposing a maximum \$1,000,000 “per day, per violation” Penalty and has directed that the ERO must ensure that in the U.S. such a Penalty amount (\$1,000,000), in such a manner (“per day, per violation”), can be imposed for a violation of the Reliability Standards should the conduct at issue so warrant.~~

~~As stated in Section 2.15 above, the maximum Penalty that will be imposed in the U.S. for violation of a Reliability Standard is \$1,000,000 per day. However, ~~Some~~ Reliability Standards may not support the assessment of Penalties on a “per day, per violation” basis, but instead should have Penalties calculated based on an alternative Penalty frequency or duration. Where NERC or the Regional Entity deems that a monetary Penalty is warranted, or where NERC or the Regional Entity ~~is monetizing~~ (Section ~~2.143.19~~) the value of a non-monetary sanction, ~~for the violation of such a Reliability Standard NERC or the Regional Entity~~ ~~they~~ shall determine the Penalty or monetized amount consistent with the following:~~

Multiple Instances of Violation on One Day

The nature of some Reliability Standards includes the possibility that a Registered Entity could violate the same Requirement two or more times on the same day. In this instance NERC ~~or and~~ the Regional Entity ~~are~~ is not limited to penalizing the violator a maximum of \$1,000,000 per day. ~~As NERC or the Regional Entity deems appropriate~~ NERC or the Regional Entity may deem that ~~there have been~~ multiple violations ~~of the same Requirement that~~ occurred on the same day, each of which is subject to the maximum potential Penalty of \$1,000,000 per violation, per day. Also, NERC or the Regional Entity is not constrained to assessing the same Penalty amount for each of the multiple violations, irrespective of their proximity in time.

Cumulative Over Time

Certain Requirements of ~~the~~ Reliability Standards are measured not on the basis of discrete acts, but ~~of on~~ cumulative acts over time. Reliability Standards that fall into this category ~~are~~ generally ~~those~~ involving ~~ing~~ measurements based on averages over a given period. ~~Where a violation of such a Reliability Standard has occurred the element of averaging performance over a period of time introduces the difficulty to NERC or the Regional Entity of reasonably identifying (i) what date the violation should be deemed to have occurred and (ii) its duration.~~

If a Reliability Standard Requirement measured by an average over time can only be violated once per applicable period, ~~then~~ there is risk that a disproportionately mild Penalty might be levied in a situation where the violation was serious and the effects on the Bulk Power System ~~were~~ severe. In the future, as individual Reliability Standards are revised, each Reliability Standard Requirement that is based on an average over time will specify the minimum period in which a violation could occur and how to determine when a violation arises, which may be other than once per applicable period⁷. In the interim until relevant Reliability Standards are so modified, where assessing a Penalty for violation of any ambiguity on this point will be construed conservatively, meaning that where a Registered Entity has not complied with such a Reliability Standard NERC or the Regional Entity will generally consider that only one violation occurred per measurement period. However, ~~notwithstanding this general principle of one violation per measurement period~~, if an average must be measured by a span of time greater than a month, each month of that span shall constitute at a minimum one violation.

Periodically Monitored Discrete Violation

Some Reliability Standards may involve discrete events which are only monitored periodically or which are reported by exception. If a Requirement of such a Reliability Standard states that a discrete event constitutes a violation, then (i) a violation arises when that event occurs and (ii) that violation continues until remedied; and furthermore, (iii) the violation ~~is deemed to have~~ occurred at the point that the Registered Entity entered into noncompliance with the Reliability Standard, regardless of the monitoring period for the activity or its date of discovery or reporting. For example, if a task required by a Reliability Standard Requirement ~~has~~was not ~~been~~ done by the required date, it is irrelevant that monitoring for compliance for the Requirement occurs only on a yearly or other periodic basis; NERC or the Regional Entity will deem a violation to have occurred on the first day of noncompliance and each day thereafter until compliance is effectuated. Similarly, if a discrete event occurs and is not remedied on the date of its occurrence, then NERC or the Regional Entity will deem a violation to have occurred on the day of the first instance of the noncompliance and each day, ~~or portion thereof~~ thereafter until the entity is in compliance ~~is effectuated~~.

~~Non-compliance with a Reliability Standard of this type will subject the violator to the potential maximum monetary Penalty of \$1,000,000 per violation per day in violation.~~

NERC or the Regional Entity may, at its discretion, ~~is not constrained to~~ assessing the same Penalty amount for each day that the Registered Entity was in violation of the Reliability Standard Requirement in question.

⁷ ~~Para. 41; FERC Order on Clarification and Rehearing [Docket No. RR06-1-006]~~

4.3. Determination of Monetary Penalties

The following ~~This Section~~ describes the specific steps that NERC or the Regional Entity will follow to determine the monetary Penalty for a violation⁸. The determination of non-monetary sanctions is discussed in Section 54 of this document; ~~Section 6 discusses remedial action.~~

- Step 1. ~~NERC or the Regional Entity will set~~ the Base Penalty Amount for the violation ~~will be set~~ as discussed in Sections 43.1 and 43.2, below.
- Step 2. ~~NERC or the Regional Entity will adjust~~ the Base Penalty Amount set in Step 1 ~~will be reviewed~~ pursuant to Section 43.3, below. This will result in the Adjusted Penalty Amount.
- Step 3. ~~NERC or the Regional Entity may review~~ the Adjusted Penalty Amount determined in Step 2 ~~may be reviewed~~ in light of the violator's financial ability to pay the Penalty. Also, where applicable, NERC or the Regional Entity will reconfirm that the Penalty ~~set~~ will disgorge unjust profits or economic benefits associated with an economic choice to violate⁹. At the conclusion of this review, NERC or the Regional Entity will set the Final Penalty Amount ~~will be set~~.

~~Unless NERC or the Regional Entity deems alternative frequency or duration is warranted Penalties shall be assessed on a per violation per day basis. At the discretion of NERC or the Regional Entity, a Penalty may be assessed on a per violation per day basis or with an alternative frequency or duration.~~ Where NERC or the Regional Entity deems that alternative Penalty frequency or duration is warranted, the Notice of Penalty associated with the violation will clearly identify this and provide the rationale for it. Where NERC or the Regional Entity deems that alternative Penalty frequency or duration is warranted, Penalties shall be determined in accordance with section 3.212.16 of these Sanction Guidelines.

4.13.1 Initial Value Range of the Base Penalty Amount

NERC or the Regional Entity will determine an initial value range for the Base Penalty Amount by considering ~~two factors regarding the violation:~~ the Violation Risk Factor (“VRF”) of the Requirement violated and the Violation Severity Level (VSL) assessed for the violation. Using the Base Penalty Amount Table provided in Appendix A NERC or the Regional Entity will look up the initial value range for the Base Penalty Amount by finding the intersection of the violation's VRF and VSL on the table.¹⁰

4.1.13.1.1 Violation Risk Factor

Each ~~Requirement set out within NERC's Reliability Standards Requirement~~ has been assigned a Violation Risk Factor (VRF) through the NERC Reliability Standards development process. The ~~VRFs~~ factors have been defined and approved through the Reliability Standards development process and are assigned to Requirements to provide clear, concise and comparative association between the violation of a Requirement and the expected or potential impact of the violation to the reliability of the Bulk Power System. One of three defined levels of risk is assigned to each Reliability Standards Requirement: l Lower VRF Violation Risk Factor, or; m Medium VRF Violation Risk Factor; or; h High VRF Violation Risk Factor. ~~Definitions of the factors can be found in appropriate Reliability Standards development process documentation.~~

⁸ The text in this section discusses the determination of a single Penalty for an individual violation; however, the process laid out is also applicable to determining the individual Penalties, or a single aggregate Penalty, for multiple violations that are associated with each other as discussed in Section 3-Part 3.12.8 of this document.

⁹ ~~Reference: Section 3-Parts 3.15 and 3.16.~~

¹⁰ As discussed in Section 3-Part 3.12.5 of this document, where there is more than one violation in play, but the violations are sufficiently associated, NERC or the Regional Entity may set a single initial value range that is appropriate in light of the individual VRF/VSL combinations of the violations.

4.1.23.1.2 Violation Severity Level

~~Violation Severity Levels (VSLs) are defined levels measurements of the degree to which a violator violated a Requirement of a Reliability Standard was violated. Whereas VRFs Violation Risk Factors are determined pre-violation and indicate the relative potential impacts that violations of each Reliability Standard could pose to the reliability of the Bulk Power System, VSLs are the Violation Severity Level is assessed post-violation and is are an indicator of the severity of the how severely the violator actually violated violation of the Reliability Standard(s) Requirement(s) in question.~~

~~These Sanction gGuidelines utilize the VSLs, which Violation Severity Levels that have been established¹¹ by NERC for Requirements of the Reliability Standards. Up to four levels can be defined for each Requirement; the levels have been designated as: Lower, moderate, high, and Severe.~~

4.23.2 Setting of the Base Penalty Amount

NERC or the Regional Entity will set the Base Penalty Amount for the violation. The Base Penalty Amount ~~set~~ for the violation may be set at the highest figure of the initial value range determined pursuant to Section ~~4.13.1~~, above. However, NERC or the Regional Entity may set the Base Penalty Amount at or below the lowest figure of the initial value range in light of two specific circumstances regarding the violation and the violator, specifically:

- a. The applicability of the ~~VRF~~ Violation Risk Factor of the violation to the specific circumstances¹² of the violator.
- b. Whether this is an inconsequential first violation by the violator of the Reliability Standard(s) in question.

As noted in Section ~~3.122.7~~, NERC or the Regional Entity will consider the time horizon ~~for involved with~~ the violation when setting the Base Penalty Amount for the violation. ~~As also noted in Section 3.12 this consideration will be documented for inclusion in the Notice of Penalty issued for the violation.~~

The Penalty amount resulting from this review will be the Base Penalty Amount that is used as the basis for further adjustment pursuant to the factors discussed in the next section (3.3) of this document.

4.2.13.2.1 Applicability of the Violation Risk Factor

~~VRFs~~ Violation Risk Factors are assigned to Reliability Standards² Requirements as indicators of the expected risk or harm to the Bulk Power System posed by the violation of a Requirement by a typical or median Registered Entity that is required to comply. NERC or the Regional Entity may consider the specific circumstances of the violator to determine if the violation of the Requirement in question actually produced the degree of risk or harm anticipated by the ~~VRF~~ Violation Risk Factor. If that expected risk or harm was not or would not have been produced, NERC or the Regional Entity may set the Base Penalty Amount to a value it (i) deems appropriate and (ii) is within the initial value range set above pursuant to Section 3.1.

4.2.23.2.2 First Violation

If the actual or foreseen impact of the violation is judged to be inconsequential by NERC or the Regional Entity and the violation is the first incidence of violation of the Requirement in

¹¹ ~~Assignment of these levels will be complete and filed with the Commission by March 1, 2008 in accordance with FERC Order on Compliance Filing dated June 7, 2007 [Docket No. RR06-1-007].~~

¹² The circumstances of the violator will include but not be limited to, ~~as appropriate~~: the violator's aggregate and net ~~Loadload~~; and interconnections characteristics such as voltage class and transfer ratings.

question by the violator, NERC or the Regional Entity may at its discretion: (i) set the Base Penalty Amount to a value it deems appropriate within the initial value range set above pursuant to Section 43.1, or (ii) excuse the Penalty for the violation (i.e. set the Base Penalty Amount to ~~0~~\$).

This relief will generally not be afforded to the violator if NERC or the Regional Entity determines that the violator has a poor [internal compliance program or there is other evidence of a poor culture of compliance](#) or compliance record; e.g. the circumstances discussed in Section 43.3.1 have been an aggravating factor in one or more previous Penalties assessed ~~against~~ the violator.

This relief will not be available for consideration in [those](#) instances where the violator ~~has~~ concealed or attempted to conceal the violation, failed or refused to comply with compliance directives from NERC or the Regional Entity, or intentionally violated for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the Bulk Power System.

4.33.3 Application of Adjustment Factors

Adjustment factors provide ~~an~~the opportunity ~~to~~for NERC or the Regional Entity to adjust the Base Penalty Amount to reflect the specific facts and circumstances material to each violation and violator.

These ~~Sanction~~ Guidelines recognize and require that, as a minimum, NERC or the Regional Entity consider the following:

- a. Repetitive violations and the violator's compliance history
- b. Failure of the violator to comply with compliance directives
- c. [Disclosure of the violation by the violator through ~~Self-reporting disclosure~~, or as the result of a compliance self-analysis following a Bulk Power System event](#), and voluntary [Mitigating Activities](#) ~~or corrective action~~, by the violator
- d. Degree and quality of cooperation by the violator in the violation investigation and in any ~~remedial action~~ [Mitigating Activities](#) directed for the violation
- e. The presence and quality of the violator's compliance program ~~quality~~

f. Settlement

~~f.g.~~ Any attempt by the violator to conceal the violation

~~g.h.~~ Intentional violations

~~h.i.~~ Extenuating circumstances

~~Two documents issued by United States regulatory agencies will be instructive to NERC and the Regional Entities when they are determining Penalties for violations of the Reliability Standards: the FERC's Policy Statement on Enforcement issued on October 20, 2005 under Docket No. PL06-00, and; U.S Securities and Exchange Commission (SEC) Release No. 44969 under the Securities and Exchange Act of 1934, issued on October 23 2001, also concurrently issued by the SEC as Release No. 1470 under Accounting and Auditing Enforcement.~~

NERC or the Regional Entity may also consider other ~~additional~~ factors it deems appropriate under the circumstances as long as their use is clearly identified and adequately justified. The effect of using these factors ~~will also~~must be fully and clearly disclosed [in the Notice of Penalty and supporting documents](#).

4.3-13.3.1 Repetitive Violations and Compliance History

~~A bulleted point under Paragraph 20 of the FERC Policy Statement on Enforcement highlights repeat offenses by a violator.~~ If a violator has had repetitive infractions of the same or a closely-related Reliability Standard Requirement, particularly within a time frame defined within the Reliability Standard(s) or deemed appropriate by NERC or the Regional Entity in the absence of ~~a definition of the Reliability Standard(s) defining the~~ a time frame ~~in the relevant Reliability Standard~~, NERC or the Regional Entity shall consider ~~an~~ some increase to the Penalty. 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.

The ~~term "violation reset time period"~~ or reset time frame of a Reliability Standards Requirement may be defined or implied within a given Reliability Standard ~~to describe~~ the period of time generally required for a violator to continue operations without ~~incidence of further violation(s) of the violating a~~ Reliability Standards, particularly ~~of the initial Reliability Standard violated~~ or a similar Reliability Standard ~~violated, in order to avoid~~ Expiration of this reset period or reset time frame would serve to negate or minimize consideration of the violator's previous violation history for sanctioning purposes in the event of a subsequent violation(s). NERC ~~and~~ the Regional Entity shall exercise appropriate judgment and discretion in this regard as warranted by the facts and circumstances, particularly where no reset ~~time~~ period or reset time frame is specifically set within the Reliability Standard violated. Repeat violations within violation reset ~~time~~ periods or reset time frames are aggravating factors in the determination of the Penalty or sanctioning. Accordingly, a violation history of no violations will produce no mitigation of the Penalty otherwise determined; a violation history of infrequent minor violations of lesser risk Requirements assessed lower ~~VSL Violation Severity Levels~~ may result in small or no increase; and a history of more frequent violations or previous violations of higher risk Requirements assessed more severe ~~Violation Severity Level~~ VSLs will generally incur commensurately larger increases.

4.3-23.3.2 Failure to Comply with a Remedial Action Compliance Directives or with Agreed Corrective or Mitigating Activity

If the violator has violated Reliability Standard Requirements ~~despite not withstanding having received~~ related ~~compliance~~ Remedial Action ~~Directives~~ or despite having agreed to corrective or Mitigating Activities for prior violations, such as for remedial action from NERC or the Regional Entity, NERC or the Regional Entity shall consider ~~some~~ increase ~~to~~ the Penalty.

4.3-33.3.3 Disclosure of the Violation Through Self-Reporting Disclosure and Voluntary Mitigating Activities by the Violator Corrective Action

NERC or the Regional Entity shall consider whether a violator ~~self disclosed~~ reported the violation by a Self-Report, prior to detection or intervention by NERC or the Regional Entity, and any Mitigating Activities voluntarily ~~action~~ undertaken by the violator to correct the ~~situation~~ noncompliance. ~~NERC or the Regional Entity will be instructed in their consideration of these factors by the text of Paragraphs 24 and 25 of the FERC Policy Statement on Enforcement.~~ As they deem warranted, NERC or the Regional Entity may reduce the violator's Penalty ~~consistent with the cited sections of the FERC policy~~. 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 or Spot Check process unless the severity of the violation is found to be greater than reported by the violator in the Self-Report or Self-Certification.

4.3.43.3.4 Degree and Quality of Cooperation in Violation Investigation and Remedial Action

NERC or the Regional Entity shall consider the degree and quality of the violator's cooperation with NERC or the Regional Entity in the investigation of the violation and any ~~remedial action~~Mitigating Activities arising from it. ~~NERC or the Regional Entity will be instructed in making their determination on this by the text of Paragraphs 26 and 27 of the FERC Policy Statement on Enforcement.~~ NERC or the Regional Entity may adjust the violator's Penalty as they deem appropriate, which warranted commensurate with the cited sections of the FERC policy statement. This may result in an increase, a decrease or no change to the Penalty.

4.3.53.3.5 Presence and Quality of Violator's Internal Compliance Program

NERC or the Regional Entity shall consider the presence and quality of the violator's internal compliance program, if any, and other indicators of the violator's culture of compliance. ~~NERC or the Regional Entity will be instructed in making their determination on this factor by the text of Paragraphs 22 and 23 of the FERC Policy Statement on Enforcement. As they deem warranted,~~ NERC or the Regional Entity may reduce the violator's Penalty as they deem appropriate, consistent with the cited sections of the FERC policy. Consistent with the FERC policy However, NERC or the Regional Entity may not increase a violator's Penalty specifically solely on the grounds that the violator has no internal compliance program or a poor quality program.

3.3.6 Settlement

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.

4.3.63.3.7 Violation Concealment and Non-Responsiveness

~~Two bulleted points under Paragraph 20 of the FERC Policy Statement on Enforcement highlight misrepresentation of material facts and resistance or impediment to inquiry of a violation. When determining a Penalty NERC or the Regional Entity shall consider any concealment or attempt to conceal the violation, or information needed to investigate the violation, on the part of the violator. 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. The presumption in such circumstances is to double; some significant increase to the Penalty shall be considered; doubling of the Penalty otherwise determined is suggested. Conduct of this nature on more than one occasion regarding one violation, or with respect to more than one violation, should incur an even larger increase to the Penalty otherwise determined; however, NERC or the Regional Entity will determine the actual increase to the Penalty based on the particular facts and circumstances of the violation. Additionally, NERC or the Regional Entity shall consider an increase to the Penalty if NERC or the Regional Entity determines, based on its review of the facts, that the violator resisted or impeded the discovery and review of a violation.~~

4.3.73.3.8 Intentional Violation

~~Another bulleted point under Paragraph 20 of the FERC Policy Statement on Enforcement highlights offenses as willful action by a violator.~~ When determining a Penalty NERC or the Regional Entity shall consider if the violator intentionally violated the Reliability

~~Standard without just cause; i.e.,~~ for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the Bulk Power System. If the violator engaged in such conduct, ~~asome~~ significant increase to the Penalty shall be considered; ~~the presumption in such cases is to doubling of~~ the Penalty otherwise determined ~~is suggested~~. If conduct of this nature has been detected on more than one occasion, NERC or the Regional Entity should assess an even larger increase to the Penalty ~~otherwise determined~~. NERC or the Regional Entity will determine the actual increase to the Penalty based on the particular facts and circumstances of each case.

NERC or the Regional Entity will consider violations attributable to an economic choice to violate as intentional violations. ~~Consistent with the FERC Policy Statement on Enforcement a~~Any Penalty issued involving conduct of this manner shall ~~asat~~ a minimum disgorge any profits or economic benefits ~~the violator~~ acquired as a consequence of the behavior, whenever and to the extent that they can be determined or reasonably estimated.

4.3.83.3.9 Extenuating Circumstances

NERC or the Regional Entity will consider ~~anyif there are~~ extenuating circumstances regarding the violation that justify reduction or elimination of the Penalty otherwise determined.

~~Consideration of adjusting a Penalty for this factor would be inconsistent with NERC or the Regional Entity increasing a Penalty after consideration of any other factor included in this section of these guidelines, such as intentional violation without justifiable cause or concealment or attempt to conceal.~~

4.43.4 Setting of the Final Penalty Amount

The Adjusted Penalty Amount determined in Step 2 may be reviewed in light of the violator's financial ability to pay the Penalty. ~~Also, if~~ the violation ~~was resulted from~~ an economic choice, NERC or the Regional Entity will ~~re~~confirm that the Penalty ~~set~~ will disgorge any unjust profits or economic benefits. At the conclusion of this review, if applicable, NERC or the Regional Entity will set the Final Penalty Amount ~~will be set~~.

4.4.13.4.1 Violator's Financial Ability to Pay¹³

At the written request of the violator NERC or the Regional Entity will review the Penalty determined in Step 2 in light of relevant, verifiable information that the violator provides regarding ~~its~~~~their~~ financial ability to pay. At the conclusion of this review NERC or the Regional Entity may:

1. Reduce the Penalty ~~payable~~ to an amount that NERC or the Regional Entity, ~~as applicable,~~ deems ~~that~~ the violator has the financial ability to pay, or;
2. Excuse the Penalty amount payable, or;
3. Sustain the Penalty amount determined in Step 2.

~~Where the Penalty amount has been reduced or excused, if~~ NERC or the Regional Entity reduces or excuses the Penalty, NERC or the Regional Entity shall consider the assessment of appropriate non-monetary sanction(s) as a substitute or an alternative for the Penalty amount ~~otherwise considered appropriate that has been excused or by which the Penalty has been reduced.~~

¹³ NERC anticipates that this will be the primary vehicle for addressing the ability to pay of "not-for-profit" and other similar organizations.

4.4.23.4.2 Reconfirm~~e~~ Confirmation of Disgorgement of Unjust Profit or Gain

Notwithstanding the application of any other consideration or factor applicable to the determination of a just and reasonable Penalty for the violation, if the violation in question involved an economic choice to violate [a Reliability Standard](#), NERC or the Regional Entity shall reconfirm that the Penalty ~~set~~ meets the requirements set forth in ~~Parts 3.15 and 3.16 of~~ Sections [2.10 and 2.11](#)~~3~~ of this document.

5.4. Determination of Non-Monetary Sanctions

The imposition of sanctions is not ~~limited~~~~bounded~~ to monetary Penalties. Non-monetary sanctions ~~applied must~~ may be applied with the objective of promoting reliability and compliance with the Reliability Standards. Non-monetary sanctions may include, ~~but not be limited to, the following:~~ limiting activities, functions, or operations, or placing the violator on a reliability watch list of significant violators.

~~a. Limitations on activities, functions, or operations~~

~~b. Placing an entity on a reliability watch list composed of major violators~~

6. Remedial Action Directives

6.1 Definition and Anticipated Use

Remedial Action Directives are directives that may be issued to a Bulk Power System owner, operator, or user to resolve an Alleged Violation of a Reliability Standard by addressing conditions, practices, or any other relevant action or activity that is immediately necessary to terminate or correct to protect the reliability of the Bulk Power System from an imminent threat. A Remedial Action Directive will be issued when NERC or the Regional Entity identifies an Alleged Violation of a Reliability Standard that must be corrected immediately to protect the reliability of the Bulk Power System from the imminent threat that NERC or the Regional Entity has identified.

NERC or the Regional Entity will generally employ Remedial Action Directives where they deem it necessary to clearly specify minimum corrective actions that the subject of the Remedial Action Directive must take; additionally or alternatively a Remedial Action Directive may clearly specify timelines within which the Registered Entity must take specified actions, complete specified tasks, or achieve specified outcomes. Also, to the extent NERC or the Regional Entity is authorized to do so, a Remedial Action Directive may communicate Penalties, sanctions, or further Remedial Action Directives that may be imposed should the specific Remedial Action Directive not be complied with by those to whom it has been issued. As a rule of thumb, Remedial Action Directives will be of use to NERC or the Regional Entity whenever any significant combination of specificity, clarity, or time is of the essence to address a threat to the reliability of the Bulk Power System brought on by lack of or inadequate compliance to the Reliability Standards.

6.2 Compliance Requirements

In the United States, the Commission has concluded that owners, operators, or users of the Bulk Power System must comply with Remedial Action Directives issued to them by NERC or a Regional Entity. Noncompliance with a Remedial Action Directive may result in a substantially increased Penalty or sanction.

Remedial Action Directives issued by NERC or the Regional Entity will include a deadline by which time the owner, operator, or user must complete requirements set out in the Remedial Action Directive, and by which time the Registered Entity must demonstrate compliance to the Remedial Action Directive to NERC or the Regional Entity that issued it. Failure or refusal to meet the requirements or deadlines set out in a Remedial Action Directive may itself result in further Remedial Action Directives or significantly increased Penalties or sanctions by NERC or the Regional Entity.

6.3 No Obligation to Issue

NERC or the Regional Entity may, but is not obligated, to issue Remedial Action Directives. Lack of being issued a Remedial Action Directive does not relieve a Bulk Power System owner, operator, or user from any responsibilities they otherwise have to comply or maintain compliance with Requirements of the Reliability Standards. Remedial Action Directives will be used by NERC or the Regional Entities only as they deem warranted, when they deem warranted.

6.4 Scope of Application

The scope of Remedial Action Directives issued by NERC or the Regional Entity will be limited to conditions, practices, or any other relevant actions or activities resulting in noncompliance, or that NERC or the Regional Entity considers at significant risk of becoming noncompliant, to Requirements of the Reliability Standards, and that present an imminent threat to the reliability of the Bulk Power System. However, beyond merely directing compliance or improved compliance with Reliability Standards' Requirements, where NERC or the Regional Entity is authorized to do so, the Remedial Action Directive may also stipulate how compliance or the improvement to compliance is to be achieved.

6.5 Availability

In the United States, the Commission has interpreted the Federal Power Act to authorize the NERC or the Regional Entity can issue a Remedial Action Directive prior to completion of the confirmation review of a probable violation, or prior to the determination of a Penalty or sanction for that violation. The Commission also concluded it is not necessary for NERC or the Regional Entity to acquire the Commission's or other regulators' approval prior to issuing Remedial Action Directives. Accordingly, NERC or the Regional Entity may issue Remedial Action Directives to Registered Entities in the United States whenever they deem it necessary or otherwise warranted to do so. Also, NERC or the Regional Entity may issue Remedial Action Directives to Registered Entities in the United States regarding a violation that is immediately necessary to terminate or correct to protect the reliability of the Bulk Power System from an imminent threat, irrespective of whether that violation is ultimately verified or dismissed by NERC or the Regional Entity's investigation of the violation.

6.6 No Impact on Confirmation of Violation, or Penalties or Sanctions

Remedial Action Directives issued regarding a violation, in particular any costs incurred by the violator to comply with any such Remedial Action Directive, will not be considered when reviewing whether the aggregate of any Penalties and sanctions levied for that violation bear a reasonable relation to the seriousness of the violation. Also, any Remedial Action Directives issued with respect to a violation will not influence the outcome of the confirmation review of that violation nor the determination of Penalties or sanctions for that violation; ordering a violator to correct what needs correcting anyway is no grounds for dispelling a violation nor reducing or eliminating a Penalty or sanction that would otherwise be determined appropriate for the violator for that violation.

6.7 Types of Remedial Actions

NERC or the Regional Entities may issue Remedial Action Directives to correct compliance with NERC or Regional Reliability Standards and reduce or eliminate imminent threats to the reliability of the Bulk Power System. Examples of Remedial Action Directives include:

- a. Specifying operating or planning criteria, limits, or limitations
- b. Requiring specific system studies
- c. Defining operating practices or guidelines
- d. Requiring confirmation of data, practices, or procedures through inspection testing or other methods
- e. Requiring specific training for personnel
- f. Requiring development of specific operating plans

Appendix A: Base Penalty Amount Table

The following lists the Base Penalty amounts corresponding to combinations of Violation Risk Factor and Violation Severity Level.

Violation Risk Factor	Violation Severity Level							
	Lower		Moderate		High		Severe	
	Range Limits		Range Limits		Range Limits		Range Limits	
	Low	High	Low	High	Low	High	Low	High
Lower	\$1,000	\$3,000	\$2,000	\$7,500	\$3,000	\$15,000	\$5,000	\$25,000
Medium	\$2,000	\$30,000	\$4,000	\$100,000	\$6,000	\$200,000	\$10,000	\$335,000
High	\$4,000	\$125,000	\$8,000	\$300,000	\$12,000	\$625,000	\$20,000	\$1,000,000

NOTE: This table describes the amount of Penalty that could be applied for each day that a violation continues, subject to the considerations of Section [3.212.16](#) regarding frequency and duration of violations.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

ATTACHMENT 4A

**REVISED APPENDIX 4C OF THE RULES OF PROCEDURE –
*COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM***

CLEAN VERSION

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North American Electric Reliability Corporation

Compliance Monitoring and Enforcement Program

APPENDIX 4C TO THE RULES OF PROCEDURE

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Compliance Monitoring and Enforcement Program

COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Regional Entities to monitor, assess, and enforce compliance with Reliability Standards within the United States. Compliance Monitoring and Enforcement Programs also will be implemented in Canada consistent with Canadian laws and agreements.

1.1 Definitions

Capitalized terms used in this Compliance Program shall have the meanings set forth in Appendix 2 of the NERC Rules of Procedure. For convenience of reference, defined terms frequently used in this Appendix are also set forth below:

- 1.1.1** Alleged Violation: A Possible Violation for which the Compliance Enforcement Authority has determined, based on an assessment of the facts and circumstances surrounding the Possible Violation, that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2** Annual Audit Plan: A plan developed annually by the Compliance Enforcement Authority that includes the Reliability Standards and Registered Entities to be audited and the schedule of Compliance Audits for the calendar year.
- 1.1.3** Applicable Governmental Authority: The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4** Complaint: An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.5** Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the Requirements of applicable Reliability Standards.
- 1.1.6** Compliance Audit Participants: Registered Entities scheduled to be audited and the audit team members.
- 1.1.7** Compliance Enforcement Authority: NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.8** Compliance Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.

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- 1.1.9** Confirmed Violation: An Alleged Violation for which (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.
- 1.1.10** End Date: The last date of the period to be covered in a Compliance Audit.
- 1.1.11** Exception Report: Information provided to the Compliance Enforcement Authority by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a System Operating Limit has been exceeded) or enabling the Compliance Enforcement Authority to ascertain the Registered Entity's compliance.
- 1.1.12** ISO/RTO: An independent transmission system operator or regional transmission organization approved by the FERC or the Public Utility Commission of Texas.
- 1.1.13** Mitigating Activities: 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.
- 1.1.14** Mitigation Plan: An action plan developed by the Registered Entity to (1) correct a violation of a Reliability Standard and (2) prevent re-occurrence of the violation.
- 1.1.15** NERC Compliance Registry: A list, maintained by NERC pursuant to Section 500 of the NERC Rules of Procedure and Appendix 5B, the NERC *Statement of Compliance Registry Criteria*, of the owners, operators and users of the Bulk Power System, and the entities registered as their designees, that perform one or more functions in support of reliability of the Bulk Power System and are required to comply with one or more Requirements of Reliability Standards.
- 1.1.16** NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan: The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the Compliance Enforcement Authority in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.

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- 1.1.17** Notice of Alleged Violation and Proposed Penalty or Sanction: A notice issued by the Compliance Enforcement Authority to a Registered Entity pursuant to Section 5.3.
- 1.1.18** Notice of Completion of Enforcement Action: A notice issued by the Compliance Enforcement Authority to a Registered Entity, pursuant to Section 5.10, stating that an enforcement action is closed.
- 1.1.19** Notice of Confirmed Violation: A notice issued by the Compliance Enforcement Authority to a Registered Entity confirming the violation of one or more Reliability Standards.
- 1.1.20** Notice of Penalty: A notice prepared by NERC and filed with FERC, following approval by NERC of a Notice or other notification of Confirmed Violation or a settlement agreement, stating the Penalty or sanction imposed or agreed to for the Confirmed Violation or as part of the settlement.
- 1.1.21** Notice of Possible Violation: A notice issued by the Compliance Enforcement Authority to a Registered Entity that (1) states a Possible Violation has been identified, (2) provides a brief description of the Possible Violation, including the Reliability Standard Requirement(s) and the date(s) involved, and (3) instructs the Registered Entity to retain and preserve all data and records relating to the Possible Violation.
- 1.1.22** Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the Compliance Enforcement Authority on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.23** Possible Violation: The identification, by the Compliance Enforcement Authority, of a possible failure by a Registered Entity to comply with a Reliability Standard that is applicable to the Registered Entity.
- 1.1.24** Preliminary Screen: An initial evaluation of evidence indicating potential noncompliance with a Reliability Standard has occurred or is occurring, conducted by the Compliance Enforcement Authority for the purpose of determining whether a Possible Violation exists, and consisting of an evaluation of whether (1) the entity allegedly involved in the potential noncompliance is registered, (2) the Reliability Standard Requirement to which the evidence of potential noncompliance relates is applicable to a reliability function for which the entity is registered, and (3) if known, the potential noncompliance

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is not a duplicate of a Possible Violation or Alleged Violation which is currently being processed.

- 1.1.25** Regional Implementation Plan: An annual plan, submitted by on or about October 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the Regional Entity, (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the Regional Entity's Annual Audit Plan.
- 1.1.26** Registered Entity: An owner, operator, or user of the Bulk Power System, or the entity registered as its designee for the purpose of compliance, that is included in the NERC Compliance Registry.
- 1.1.27** Remedial Action Directive: An action (other than a Penalty or sanction) required by a Compliance Enforcement Authority that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat.
- 1.1.28** Required Date: The date given a Registered Entity in a notice from the Compliance Enforcement Authority by which some action by the Registered Entity is required.
- 1.1.29** Self-Certification: An attestation by a Registered Entity that it is compliant or non-compliant with a Reliability Standard Requirement that is the subject of the 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.
- 1.1.30** Self-Report: A report by a Registered Entity stating that the Registered Entity believes it has, or may have, violated a Reliability Standard.
- 1.1.31** Spot Check: A process in which the Compliance Enforcement Authority requests a Registered Entity to provide information (1) to support the Registered Entity's Self-Certification, Self-Report, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards, or (2) as a random check, or (3) in response to operating problems or system events.

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2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS

NERC shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure and Appendix 5B, *Statement of Compliance Registry Criteria*. Organizations are responsible to register and to comply with Reliability Standards if they are owners, operators, and users of the Bulk Power System, perform a function listed in the functional types identified in Section II of Appendix 5B, and are material to the Reliable Operation of the Bulk Power System as defined by the criteria and notes in Appendix 5B. Regional Entities shall (i) develop and provide to NERC information to assist NERC to register organizations responsible for complying with Reliability Standards, and (ii) in the event of a Registration appeal to NERC or an Applicable Governmental Authority, provide information requested by NERC concerning how the Registered Entity meets the Registration criteria or is otherwise material to the reliability of the Bulk Power System.

NERC shall notify organizations of their inclusion on the NERC Compliance Registry and shall maintain the NERC Compliance Registry on its web site. NERC shall inform each Registered Entity at the time of Registration of the Reliability Standards that are applicable to reliability functions for which the Registered Entity is registered. Each Registered Entity shall inform NERC or the applicable Regional Entity promptly of changes to the Registered Entity's Registration information including planned or completed changes in ownership of Bulk Power System Facilities, Registration status, address and other contact information, and name of designated compliance contact. NERC will provide FERC and Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

NERC and each Regional Entity will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance matters. NERC and the applicable Regional Entity will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

NERC shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. Any such provision of information to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure.

3.0 COMPLIANCE MONITORING PROCESSES

The Compliance Enforcement Authority will monitor Registered Entities' compliance with Reliability Standards using the compliance monitoring processes described in this Section.

If a compliance monitoring process described in this Section reveals a potential noncompliance with a Reliability Standard, the Compliance Enforcement Authority will conduct a Preliminary

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Screen of the potential noncompliance in accordance with Section 3.8. In addition, if the Compliance Enforcement Authority obtains evidence or information of a potential noncompliance with a Reliability Standard through any other means, including but not limited to an Exception Report or other report of noncompliance that a Registered Entity is required to submit in accordance with the terms of a Reliability Standard, the Compliance Enforcement Authority will conduct a Preliminary Screen of the information in accordance with Section 3.8. If the Preliminary Screen results in an affirmative determination with respect to the Preliminary Screen criteria, a Possible Violation exists and the Compliance Enforcement Authority will proceed in accordance with Section 5.0, Enforcement Actions.

Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

The compliance monitoring processes in this Section require timely information, reports and data from Registered Entities to effectively monitor compliance with Reliability Standards. The Compliance Enforcement Authority has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting copies of Documents, data and information to be made and removing those copies from the Registered Entity's location in accordance with appropriate security procedures conforming to Section 1500 of the Rules of Procedure 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. If Documents, data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data.**

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a Registered Entity believes that a request for Documents, data or information is unreasonable, the Registered Entity may request a written determination from the NERC general counsel.

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

3.1 Compliance Audits

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. Compliance Audit processes for Compliance Audits conducted in the United States shall be based on professional auditing standards recognized in the U.S., which may include for

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example Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards and standards sanctioned by the Institute of Internal Auditors. Compliance Audit processes for Compliance Audits conducted outside the U.S. may be based on Canadian or other international standards. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the Compliance Audit, consistent with accepted auditing guidelines as approved by NERC. The audit guides will be posted on NERC's website.

3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows:

- The Compliance Enforcement Authority posts the Annual Audit Plan (developed in coordination with NERC). The Compliance Enforcement Authority provides additional information to the Compliance Audit Participants, including Compliance Audit materials, coordinating agendas and changes to the Compliance Audit schedule as required. NERC or the Regional Entity provides the Compliance Audit schedules to FERC and to any other Applicable Governmental Authority based upon the agreements in place with the other Applicable Governmental Authority.
- At least ninety (90) days prior to commencement of a regularly scheduled Compliance Audit, the Compliance Enforcement Authority notifies the Registered Entity of the Compliance Audit and the Reliability Standards to be evaluated, identifies the Compliance Audit team members and their recent employment history, and requests data, including a completed NERC pre-Compliance Audit questionnaire. If the Compliance Audit team members change from the time of the original notification, the Compliance Enforcement Authority will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the new Compliance Audit team member(s) (see Section 3.1.5.4).
- The Registered Entity provides to the Compliance Enforcement Authority the required information in the format and by the Required Date specified in the request.
- The Compliance Audit team reviews the submitted information for conformance with the Requirements of the Reliability Standards.
- The Compliance Audit team conducts an exit briefing with the Registered Entity, provides for a review of the Compliance Audit report with the Registered Entity before it is finalized, and completes a Compliance Audit report in accordance with Section 3.1.6.
- If the Compliance Audit Team identifies evidence of a potential noncompliance with a Reliability Standard Requirement by the Registered Entity, the Compliance Enforcement Authority conducts a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.

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3.1.2 Compliance Enforcement Authority Annual Audit Plan and Schedule

The Compliance Enforcement Authority shall develop an Annual Audit Plan. The Annual Audit Plan of Regional Entities will be included in the Regional Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or the Regional Entity provides the Annual Audit Plans to FERC and to any other Applicable Governmental Authority consistent with the agreements in place with the Applicable Governmental Authority.

Prior to October 1 of the year preceding the year covered by the Annual Audit Plan, the Compliance Enforcement Authority shall notify Registered Entities subject to Compliance Audits during the upcoming year of the Compliance Audit schedule. The Compliance Enforcement Authority will give due consideration to any schedule changes requested by Registered Entities for reasonable cause.

Revisions and additions to a Regional Entity Annual Audit Plan shall be communicated to and approved by NERC, and shall be communicated to the Registered Entity in a timely manner (normally sixty (60) days in advance) of changes or revisions to scheduled Compliance Audit dates.

3.1.3 Frequency of Compliance Audits

The Compliance Enforcement Authority will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure and based on criteria established by NERC. In addition to scheduled Compliance Audits, the Compliance Enforcement Authority (i) may initiate an unscheduled Compliance Audit of any Registered Entity at any time if the Compliance Enforcement Authority reasonably determines it to be necessary to ensure the Registered Entity's compliance with Reliability Standards, and (ii) shall initiate an unscheduled Compliance Audit if directed by FERC. The Compliance Enforcement Authority shall notify NERC and FERC prior to or on the same date it notifies the Registered Entity that an unscheduled Compliance Audit is being initiated. If NERC initiates the unscheduled Compliance Audit, it shall notify the appropriate Regional Entity or Entities. The Compliance Enforcement Authority shall provide at least ten (10) business days advance notice to the Registered Entity that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team.

3.1.4 Scope of Compliance Audits

3.1.4.1 Reliability Standards

A Compliance Audit shall include those Reliability Standards applicable to the Registered Entity that are identified in the NERC Implementation Plan for the current year, and may include other Reliability Standards applicable to the Registered Entity whether or not they are identified in the Regional Entity's Regional Implementation Plan for the current year.

3.1.4.2 Period Covered

The Registered Entity's data and information must show compliance with the Reliability Standards that are the subject of the Compliance Audit for the entire period covered by the

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Compliance Audit. The Compliance Enforcement Authority will indicate the beginning and End Date of the audit period in its notice of the Compliance Audit. The audit period begins the day after the End Date of the prior Compliance Audit by the Compliance Enforcement Authority (or the later of June 18, 2007 or the date the Registered Entity became subject to Reliability Standards if the Registered Entity has not previously been subject to a Compliance Audit). The audit period will not begin prior to the End Date of the previous Compliance Audit. 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. The End Date should be a specified date prior to the scheduled start of the Compliance Audit, such as the date of the notification issued to the Registered Entity pursuant to Section 3.1.1 or the date that is thirty (30) days following the date of the notification.

The Registered Entity will be expected to demonstrate compliance for the entire period described above. If a Reliability Standard specifies a document retention period that does not cover the entire period described above, the Registered Entity will not be found in noncompliance solely on the basis of the lack of specific information that has rightfully not been retained based on the retention period specified in the Reliability Standard. However, in such cases, the Compliance Enforcement Authority will require the Registered Entity to demonstrate compliance through other means. In addition, 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 Section 3.8.

3.1.4.3 Review of Mitigating Activities

The Compliance Audit may include a review of any Mitigating Activities which the Registered Entity has not yet completed, for the purpose of determining whether the Registered Entity is making adequate progress towards completion of the Mitigating Activities.

3.1.5 Conduct of Compliance Audits

3.1.5.1 Composition of Compliance Audit Teams

The Compliance Audit team shall be comprised of members whom the Compliance Enforcement Authority has determined have the requisite knowledge, training and skills to conduct the Compliance Audit. The Compliance Audit team may include (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 other Applicable Governmental Authorities so long as the Registered Entity is subject to the Applicable Governmental Authority's reliability jurisdiction. The Compliance Audit team leader shall be a staff member from the Compliance Enforcement Authority and is responsible for the conduct of the Compliance Audit and preparation of the Compliance Audit report.

3.1.5.2 Requirements for Compliance Audit Team Members

Each Compliance Audit team member must:

- Be free of conflicts of interests in accordance with the Compliance Enforcement Authority policies. Employees or contractors of the Registered Entity being audited shall

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not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.

- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the Compliance Enforcement Authority is applicable.
- Successfully complete all NERC or NERC-approved Regional Entity auditor training applicable to the Compliance Audit.
- Prior to the Compliance Audit, the Compliance Enforcement Authority shall provide confirmation to the Registered Entity that all Compliance Audit team members have executed confidentiality agreements or acknowledgments.

3.1.5.3 Compliance Audit Observers and Other Attendees

In any Regional Entity Compliance Audit of a Registered Entity, in addition to the Compliance Audit team members, the following may participate as observers: (i) NERC Staff (which may include contractors to NERC); (ii) other members of the Regional Entity's Compliance Staff; (iii) with the permission of the Regional Entity, Compliance Staff members of other Regional Entities; and (iv) representatives of FERC and of other Applicable Governmental Authorities so long as the Registered Entity is subject to the Applicable Governmental Authority's reliability jurisdiction. 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 Section 3.1.1 are observers.

In addition, at the request of the Registered Entity being audited, the Regional Entity may allow attendance at the Compliance Audit by: (1) representatives of corporate affiliates of the Registered Entity being audited that are Registered Entities or that provide compliance services, support or oversight to the Registered Entity being audited, and (2) representatives of Registered Entities whose compliance activities are conducted by the Registered Entity being audited or by the same corporate entity that conducts the compliance activities of the Registered Entity being audited (e.g., representatives of other members of a Joint Registration Organization or of participants in a Coordinated Functional Registration pursuant to Section 500 of the Rules of Procedure). Each such additional attendee must execute a confidentiality agreement approved by the Regional Entity.

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.

The Compliance Audit team leader or other staff of the Regional Entity conducting the Compliance Audit will communicate in advance with any observers or other attendees to ensure there are no undue disruptions to the Compliance Audit, such as space limitations, no conflicts of interest, and no other considerations that in the judgment of the Compliance Audit team leader may be detrimental to the conduct and quality of the Compliance Audit. If the Compliance Audit team leader identifies any such issues, he/she shall work with the proposed observers or

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attendees to facilitate observation in a less disruptive manner; or, alternatively, the Regional Entity Compliance staff will work with the proposed observers or attendees to schedule their participation in, observation of, or attendance at a different Compliance Audit in which such issues are not presented.

3.1.5.4 Registered Entity Objections to Compliance Audit Team

A Registered Entity subject to a Compliance Audit may object to any member of the Compliance Audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Any such objections must be provided in writing to the Compliance Enforcement Authority no later than fifteen (15) days prior to the start of on-site Compliance Audit work. This fifteen (15) day requirement shall not apply where a Compliance Audit team member has been appointed less than twenty (20) days prior to the start of on-site Compliance Audit work, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority within five (5) business days after receiving notice of the appointment of the Compliance Audit team member.

In the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, the Registered Entity must provide any objections to the Compliance Enforcement Authority at least five (5) business days prior to the start of on-site Compliance Audit work for the unscheduled Compliance Audit.

The Compliance Enforcement Authority will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in Section 3.1 shall be read to limit the participation generally of NERC staff in the Compliance Audit or to limit the participation generally 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 (as opposed to participation by individual NERC Staff or FERC staff members to whom the Registered Entity states a valid objection in accordance with Section 3.1.5.4).

3.1.6 Compliance Audit Reports

The Compliance Audit team shall develop a draft Compliance Audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any evidence of potential noncompliance with Reliability Standards by the Registered Entity found by the Compliance Audit team; identify any Remedial Action Directives, Mitigation Plans or other Mitigating Activities which have been completed or pending in the year of the Compliance Audit; and identify if any Confidential Information has been redacted. The report may also state areas of concern and recommendations identified by the Compliance Audit team. The draft report will be provided to the Registered Entity for comment.

The Compliance Audit team considers corrections based on comments of the Registered Entity, finalizes the Compliance Audit report, and provides the Registered Entity with a copy of the final report on or before the date the final report is provided to NERC. The Compliance Enforcement Authority provides the final report to NERC, which in turn provides the report to FERC if the report pertains to a Registered Entity or to a portion of the Bulk Power System over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a

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Registered Entity or to a portion of the Bulk Power System over which the other Applicable Governmental Authority has jurisdiction. The provision of the final Compliance Audit report to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure. Work papers and other documentation associated with the Compliance Audit shall be maintained by the Compliance Enforcement Authority in accordance with NERC or Regional Entity requirements.

NERC will not publicly post the final Compliance Audit report for at least five (5) business days following receipt. If the Compliance Audit report identifies any Possible Violations of one or more Reliability Standards, the final Compliance Audit report, or pertinent part thereof identifying the Possible Violations, shall not be released to the public by NERC until (i) the Possible Violation is dismissed prior to becoming a Confirmed Violation, or (ii) NERC submits a Notice of Penalty to FERC or other Applicable Governmental Authority, or (iii) the Registered Entity executes a settlement agreement with the Compliance Enforcement Authority pursuant to Section 5.6.

Information deemed by a Compliance Enforcement Authority or the Registered Entity as Critical Energy Infrastructure Information or Confidential Information shall be redacted from any public reports.

3.2 Self-Certifications

The Compliance Enforcement Authority may require Registered Entities to self-certify their compliance with Reliability Standards.

3.2.1 Self-Certification Process Steps

The process steps for the Self-Certification process are as follows:

- The Compliance Enforcement Authority posts and updates the reporting schedule containing the applicable reporting periods and informs Registered Entities. The Compliance Enforcement Authority and NERC will ensure that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available.
- The Compliance Enforcement Authority requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the form and manner, and by the Required Date, specified by the Compliance Enforcement Authority. The Self-Certification response may state that (i) the Registered Entity is in compliance with the Reliability Standard Requirement, (ii) the Registered Entity is not in compliance with the Reliability Standard Requirement, (iii) the Registered Entity does not own Facilities that are subject to the Reliability Standard Requirement, or (iv) the Reliability Standard requirement is not applicable to the Registered Entity.

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- At a minimum, the Compliance Enforcement Authority reviews Self-Certifications of non-compliance and Self-Certifications in which the Registered Entity has responded 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 and the Compliance Enforcement Authority may request additional data and/or information if necessary.
- If the Compliance Enforcement Authority's review of the Self-Certification indicates a potential noncompliance with a Reliability Standard by the Registered Entity, the Compliance Enforcement Authority conducts a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.

Receipt of a Self-Certification by the Compliance Enforcement Authority shall not be construed as a finding by the Compliance Enforcement Authority that the Registered Entity is compliant with, not compliant with, subject to, or not subject to, the Reliability Standard Requirement.

3.3 Spot Checks

Spot Checks will be conducted by the Compliance Enforcement Authority. Spot Checks may be initiated at the discretion of the Compliance Enforcement Authority or as directed by NERC at any time to verify or confirm Self-Certifications, Self-Reports, and Periodic Data Submittals. Spot Checks may also be random or may be initiated in response to events, as described in the Reliability Standards, or to operating problems, or system events.

3.3.1 Spot Check Process Steps

The process steps for Spot Checking are as follows:

- The Compliance Enforcement Authority shall issue a notification letter to the Registered Entity that a Spot Check will be performed, the reason for the Spot Check, and the scope of the Spot Check including the Reliability Standard Requirements that will be covered, in accordance with the advance notice period specified by the Reliability Standard. If the Reliability Standard Requirement does not specify an advance notice period, any information submittal request made by the Compliance Enforcement Authority will allow at least twenty (20) days for the Registered Entity to submit the information or make it available for review.
- The Compliance Enforcement Authority, as part of the notification package, shall provide the Registered Entity with the names and employment histories of the persons who will be conducting the Spot Check. The Compliance Enforcement Authority shall provide confirmation to the Registered Entity that the members of the Spot Check team have executed confidentiality agreements or acknowledgements. The Registered Entity may object to inclusion of any individual on the Spot Check team on the grounds specified in Section 3.1.5.4. Any such objections must be submitted to the Compliance Enforcement Authority by the later of (i) five (5) business days before the information being requested by the Compliance Enforcement Authority is submitted and (ii) five (5) business days after the Registered Entity is notified of the persons on the Spot Check team. Nothing in

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Section 3.1 shall be read to limit the participation generally of NERC staff in a Spot Check or to limit the participation generally of FERC staff in a Spot Check of a Registered Entity, or involving a portion of the Bulk Power System, over which FERC has jurisdiction (as opposed to individual NERC Staff or FERC staff members to whom the Registered Entity has stated a valid objection).

- The Spot Check may require submission of data, documentation, and information and an on-site review.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format and by the Required Date specified in the request.
- The Spot Check Team conducts a review of the information submitted to determine compliance with the Reliability Standards Requirements and may request additional data and/or information if necessary.
- If the Spot Check team's review of the information submitted indicates a potential noncompliance with a Reliability Standard Requirement by the Registered Entity, the Compliance Enforcement Authority conducts a Preliminary Screen pursuant to Section 3.8.
- The Spot Check team prepares a draft Spot Check report and provides the Registered Entity ten (10) business days to comment on the draft report.
- The Spot Check team considers any corrections based on the Registered Entity's comments, finalizes the Spot Check report and provides it to the Registered Entity and to NERC.
- If the Compliance Enforcement Authority is a Regional Entity, the Regional Entity provides the final report to NERC. NERC provides the report to FERC if the report pertains to a Registered Entity or to a portion of the Bulk Power System over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the Bulk Power System over which the other Applicable Governmental Authority has jurisdiction. The provision of the report to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure.
- The report will not be publicly posted, or otherwise made publicly available, by the Regional Entity or by NERC.

3.4 Compliance Investigations

A Compliance Investigation may be initiated at any time by the Compliance Enforcement Authority or NERC in response to a system disturbance, Complaint, or any potential noncompliance with a Reliability Standard identified by any other means.

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Compliance Investigations will generally be led by the Regional Entity's staff. NERC reserves the right to assume the leadership of a Compliance Investigation.¹ The Regional Entity shall not be entitled to appeal NERC's decision to lead a Compliance Investigation.

Compliance Investigations are confidential, unless FERC directs that a Compliance Investigation should be public or that certain information obtained in the Compliance Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Investigation will be made public.

FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or potential noncompliance with a Reliability Standard identified by any other means, or for any other purpose authorized by law. Investigations initiated by FERC or another Applicable Governmental Authority shall be governed by and conducted pursuant to the statutory authority and rules of the Applicable Governmental Authority and not the procedures set forth herein. If an Applicable Governmental Authority other than FERC initiates an investigation of a U.S.-related matter, NERC shall provide notice to FERC of the investigation prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC shall identify the other Applicable Governmental Authority, shall describe the nature of the proposed disclosures to the other Applicable Governmental Authority, and shall state the procedures NERC will utilize in connection with the Compliance Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations.

If FERC initiates an investigation of a non-U.S.-related matter, NERC shall provide notice of the investigation to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the Bulk Power System that is the subject of the investigation prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC will utilize in connection with the investigation to ensure compliance with regulations of the other Applicable Governmental Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

3.4.1 Compliance Investigation Process Steps

The process steps for a Compliance Investigation are as follows:

- The Compliance Enforcement Authority becomes aware of circumstances indicating a Reliability Standard may have been or is being violated and determines whether a

¹Examples of situations in which NERC may decide to lead a Compliance Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate Compliance Investigations into matters that may cross Regional Entity boundaries, (iii) where the potential noncompliance is related to the Regional Entity or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the Regional Entity determines it cannot conduct the Compliance Investigation.

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Compliance Investigation is warranted. Within three (3) business days of the decision to initiate a Compliance Investigation, the Compliance Enforcement Authority: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Investigation, (ii) instructs the Registered Entity to preserve all records and information relevant to the Compliance Investigation, and (iii) provides a copy of the notice to NERC. The Compliance Investigation may be expanded beyond the initial scope based on information obtained by the Compliance Enforcement Authority after initiation of the Compliance Investigation.

- NERC assigns a NERC staff member to the Compliance Investigation as an observer or team member and to serve as a single point of contact for communications with NERC, and notifies the Registered Entity as to whether the NERC staff member is acting as an observer or as a team member. Within three (3) business days after NERC receives notice of the decision to initiate a Compliance Investigation, NERC will notify FERC and each other Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the Bulk Power System to which the Compliance Investigation relates. Any such notice to FERC or to another Applicable Governmental Authority will be provided in accordance with Section 8.0, Reporting and Disclosure.

The Compliance Enforcement Authority requests data or documentation and provides a list of individuals on the Compliance Investigation team and their recent employment history. Within ten (10) business days of receiving the notification of a Compliance Investigation, a Registered Entity subject to a Compliance Investigation may object to any individual member of the Compliance Investigation team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties; however, the Registered Entity may not object to participation generally by NERC, by FERC staff or by staff of another Applicable Governmental Authority having reliability jurisdiction over the Registered Entity in the Compliance Investigation (as opposed to objecting to inclusion of specific persons on the Compliance Investigation team). Such objections must be provided in writing to the Compliance Enforcement Authority within such ten (10) business day period. The Compliance Enforcement Authority will make a final determination as to whether the individual will participate in the Compliance Investigation of the Registered Entity.

- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format and by the Required Date as specified in the request. If information is not received in the time and format requested, the Compliance Enforcement Authority may initiate the steps in **Process for Non-Submittal of Requested Data in Attachment 1**.
- If necessary, the Compliance Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- The Compliance Enforcement Authority may require the Registered Entity to (i) provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the Compliance Enforcement Authority's requests

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

- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards. The Compliance Enforcement Authority may request additional data and/or information, if necessary.
- The Compliance Enforcement Authority completes the assessment of compliance with the Reliability Standard, which may include review of a Mitigation Plan or Mitigating Activities, and provides a report of the Compliance Investigation to NERC and the Registered Entity.
- If the Compliance Enforcement Authority, at any time during the Compliance Investigation, identifies a potential noncompliance with a Reliability Standard Requirement by a Registered Entity, the Compliance Enforcement Authority shall conduct a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.
- If the Compliance Enforcement Authority determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the Compliance Investigation has been completed. NERC will in turn notify FERC and, if the Compliance Investigation pertained to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, will also notify such other Applicable Governmental Authority. Any such notice to FERC or to another Applicable Governmental Authority shall be provided in accordance with Section 8.0, Reporting and Disclosure.

3.5 Self-Reports

Self-Reports are encouraged at the time a Registered Entity becomes aware (i) that it has, or may have, violated a Reliability Standard, or (ii) the Violation Severity Level of a previously reported violation has changed. Self-Reports of a violation of a Reliability Standard are encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program or whether the violation is determined outside the pre-defined reporting schedule. 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.

3.5.1 Self-Report Process Steps

The process steps for Self-Reports are as follows:

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- The Compliance Enforcement Authority posts the Self-Report submittal forms and ensures they are maintained and available.
- The Registered Entity provides the Self-Report information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews the information to evaluate compliance with the Reliability Standards and may request that the Registered Entity provide clarification or additional data and/or information.
- The Compliance Enforcement Authority conducts a Preliminary Screen of the Self-Report information in accordance with Section 3.8.

3.6 Periodic Data Submittals

The Compliance Enforcement Authority requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, or as established by the Compliance Enforcement Authority, or on an as-needed basis. The Compliance Enforcement Authority shall issue requests for Periodic Data Submittals to Registered Entities within at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the Compliance Enforcement Authority will normally issue this request with no less than twenty (20) days advance notice.

3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows:

- The Compliance Enforcement Authority posts the current data reporting schedule on its website and informs Registered Entities of changes and/or updates. The Compliance Enforcement Authority ensures that the required submittal forms for the Reliability Standards being evaluated are maintained and available.
- The Compliance Enforcement Authority makes a request for a Periodic Data Submittal.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format and by the Required Date specified in the request.
- The Compliance Enforcement Authority reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information if necessary.
- If the Compliance Enforcement Authority's review of the data submittal indicates a potential noncompliance with a Reliability Standard Requirement by the Registered Entity, the Compliance Enforcement Authority performs a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.

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Receipt of a Periodic Data Submittal by the Compliance Enforcement Authority shall not be construed as a finding by the Compliance Enforcement Authority that the Registered Entity is compliant with, not compliant with, subject to, or not subject to, the Reliability Standard Requirement.

3.7 Complaints

Either NERC or Regional Entities may receive Complaints alleging violations of a Reliability Standard. The Compliance Enforcement Authority will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for initiating another compliance monitoring or enforcement process, except that NERC will review any Complaint where the Compliance Enforcement Authority determines it cannot conduct the review, or if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.

If the Complaint is submitted to NERC, NERC will forward the information to the Regional Entity, as appropriate.

All anonymous Complaints will be reviewed and any resulting compliance monitoring or enforcement processes conducted by NERC will be conducted in accordance with Section 3.7.2 to prevent disclosure of the identity of the complainant.

The Compliance Enforcement Authority conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment or if it provides sufficient basis for initiating another compliance monitoring or enforcement process. The Compliance Enforcement Authority will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, the Compliance Enforcement Authority determines that initiating another compliance monitoring or enforcement process is warranted, the Compliance Enforcement Authority shall conduct that compliance monitoring or enforcement process in accordance with the applicable provisions of Section 3.0.

3.7.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows:

- The complainant notifies NERC or a Regional Entity using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. NERC and the Regional Entity shall post a link to the Complaint reporting form on their respective websites. The Complaint should include sufficient information to enable NERC or the Regional Entity to make an assessment regarding whether the initiation of another compliance monitoring or enforcement process is warranted. NERC or the Regional Entity may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.
- If the Compliance Enforcement Authority determines that initiation of another compliance monitoring or enforcement process is warranted, it initiates the compliance monitoring or enforcement process in accordance with the applicable provisions of Section 3.0 or Section 5.0; otherwise it takes no further action. The Compliance

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Enforcement Authority notifies the complainant, the Registered Entity, and NERC of the initiation of the compliance monitoring or enforcement process. If the Compliance Enforcement Authority determines that initiation of another compliance monitoring or enforcement process is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

- The Compliance Enforcement Authority fully documents the Complaint and the Complaint review, and whether another compliance monitoring or enforcement process is warranted.

3.7.2 Anonymous Complainant Notification Procedure

A complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, and wishes to remain anonymous, can report the information and request that the complainant's identity not be disclosed.² All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.7.1. Anonymous Complaints received by a Regional Entity will either be directed to NERC or the Regional Entity will collect and forward the information to NERC, at the Regional Entity's discretion. Neither NERC nor the Regional Entity shall disclose the identity of any person or entity reporting information indicating violations of Reliability Standards to NERC or to a Regional Entity that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where a Regional Entity collects the information, by NERC and the Regional Entity. If the Compliance Enforcement Authority determines that initiation of another compliance monitoring and enforcement process is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

3.8 Preliminary Screen

If the Compliance Enforcement Authority obtains information, through one of the compliance monitoring processes described in this Section 3.0 or by any other means, that indicates a potential noncompliance with a Reliability Standard Requirement, the Compliance Enforcement Authority shall conduct a Preliminary Screen of the potential noncompliance. The Preliminary Screen shall be conducted within five (5) business days after the Compliance Enforcement Authority identifies the potential noncompliance, except that (i) if the Compliance Enforcement Authority identifies the potential noncompliance during a Compliance Audit, the Preliminary Screen shall be conducted immediately following the exit briefing of the Registered Entity, and (ii) if the Compliance Enforcement Authority 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.

A Preliminary Screen shall be limited to determining whether:

²NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see www.nerc.com for additional information).

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- (1) the entity allegedly involved in the potential noncompliance is a Registered Entity;
- (2) the Reliability Standard Requirement to which the evidence of potential noncompliance relates is applicable to the entity, has been approved by the Applicable Governmental Authority, and is in effect at the time of the potential noncompliance; and
- (3) if known, the potential noncompliance is not a duplicate of a Possible Violation or Alleged Violation that is currently being processed.

If the Preliminary Screen results in an affirmative determination with respect to the above criteria, a Possible Violation exists and the Compliance Enforcement Authority shall proceed in accordance with Section 5.0, unless an alternative enforcement process is used.

The Compliance Enforcement authority shall maintain records of all Preliminary Screens.

4.0 ANNUAL IMPLEMENTATION PLANS

4.1 NERC Compliance Monitoring and Enforcement Program Implementation Plan

NERC will maintain and update the NERC Implementation Plan, to be carried out by Compliance Enforcement Authorities in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the Regional Entities on or about September 1 of each year and will specify the Reliability Standards requiring reporting by Registered Entities to the Compliance Enforcement Authority to provide verification of compliance through one of the monitoring methods described in this Compliance Program. The NERC Implementation Plan will be posted on the NERC website. NERC may update and revise the NERC Implementation Plan during the course of the year as necessary. Regional Entities have discretion to make modifications to the NERC Implementation Plan with respect to individual Registered Entities.

4.2 Regional Implementation Plan

By on or about October 1 of each year, each Regional Entity will submit a Regional Implementation Plan for the following calendar year to NERC for review and approval. The Regional Implementation Plan and the Regional Entity's other relevant Compliance Program documents shall be posted on the Regional Entity's website. The Regional Entity may update and revise the Regional Entity Implementation Plan during the course of the year as necessary, with NERC approval, or as required by NERC. Regional Entities have discretion to make modifications to the Regional Entity Implementation Plan with respect to individual Registered Entities.

5.0 ENFORCEMENT ACTIONS

The Compliance Enforcement Authority shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the Compliance Enforcement Authority's Area of Responsibility, and (ii) if so, the appropriate Mitigating Activities, and Penalties and

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sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction Guidelines* by Regional Entities by direct oversight and review of Penalties and sanctions, and each Regional Entity shall provide to NERC such information as is requested by NERC concerning any Penalty, sanction, or Mitigating Activities imposed by the Regional Entity.

The imposition and acceptance of Penalties and sanctions shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards.

The Compliance Enforcement Authority has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting 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 Section 1500 of the Rules of Procedure 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. Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a Registered Entity believes that a request for Documents, data or information is unreasonable, the Registered Entity may request a written determination from the NERC general counsel. If Documents, data or information requested from a Registered Entity in connection with an enforcement process are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

The following enforcement process is undertaken by the Compliance Enforcement Authority following identification of a Possible Violation of a Reliability Standard Requirement by a Registered Entity. However, under the circumstances presented by some Possible Violations, Alleged Violations or Confirmed Violations, absolute adherence to the following enforcement process, 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 Compliance Enforcement Authority and the Registered Entity. In such circumstances, other approaches may be considered and employed. The Registered Entity shall be entitled to object to the use of any such other approach.

5.1 Notice of Possible Violation

If a Preliminary Screen conducted in accordance with Section 3.8 results in an affirmative determination with respect to the Preliminary Screen criteria, a Possible Violation exists. The Compliance Enforcement Authority shall issue a Notice of Possible Violation to the Registered Entity. The Notice of Possible Violation shall:

- (i) state that a Possible Violation by the Registered Entity has been identified;
- (ii) provide a brief description of the Possible Violation, including the Reliability Standard requirement(s) and, if known, the date(s) involved; and

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- (iii) instruct the Registered Entity to retain and preserve all data and records relating to the Possible Violation.

Upon issuing a Notice of Possible Violation, the Compliance Enforcement Authority reports the Possible Violation to NERC. NERC reports the Possible Violation to the Board of Trustees Compliance Committee and submits a Notice of Possible Violation, on a confidential basis, to FERC and to other Applicable Governmental Authorities, as applicable. Any such notice to FERC or to other Applicable Governmental Authorities shall be provided in accordance with Section 8.0, Reporting and Disclosure.

5.2 Assessment of Possible Violation

After issuing a Notice of Possible Violation, the Compliance Enforcement Authority shall conduct an assessment of the facts and circumstances surrounding the Possible Violation to determine whether evidence exists to indicate the Registered Entity has violated the Reliability Standard Requirement(s) identified in the Notice of Possible Violation, or whether the Possible Violation should be dismissed. The Compliance Enforcement Authority may consider any additional information to demonstrate that the Possible Violation should be dismissed or modified.

5.3 Notification to Registered Entity of Alleged Violation

If the Compliance Enforcement Authority determines, based on an assessment of the facts and circumstances surrounding a Possible Violation, that evidence exists to indicate a Registered Entity has violated a Reliability Standard, the Compliance Enforcement Authority shall notify the Registered Entity of the determination of the Alleged Violation, through issuance of a Notice of Alleged Violation and Proposed Penalty or Sanction or similar notification, and shall report the Alleged Violation to NERC. The notification of Alleged Violation shall be transmitted by the Compliance Enforcement Authority to the Registered Entity by electronic mail and shall be effective as of the date of the electronic mail message from the Compliance Enforcement Authority transmitting the notification. The notification of Alleged Violation shall include, at a minimum:

- (i) the Reliability Standard and Requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the Compliance Enforcement Authority believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed Penalty or sanction, if any, determined by the Compliance Enforcement Authority to be applicable to the Alleged Violation in accordance with the NERC *Sanction Guidelines*, including an explanation of the basis on which the particular Penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the Compliance Enforcement Authority will deem the

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Registered Entity to have accepted the determination of violation and proposed Penalty or sanction:

1. agree with the Alleged Violation and proposed Penalty or sanction, and agree to submit and implement a Mitigation Plan or other Mitigating Activities to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.4, or
2. agree with the Alleged Violation and agree to submit and implement a Mitigation Plan or other Mitigating Activities to eliminate the violation and its underlying causes, but contest the proposed Penalty or sanction, and may provide a response in accordance with Section 5.4, or
3. contest both the Alleged Violation and proposed Penalty or sanction,
 - (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed Penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed Penalty or sanction;
 - (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed Penalty or sanction, the Registered Entity may elect to have a hearing conducted pursuant to either (i) the short-form procedure in Section 1.3.4, or (ii) the general hearing procedure, in **Attachment 2, Hearing Procedures**, and
 - (viii) required procedures to submit the Registered Entity's Mitigation Plan.

NERC shall notify FERC of the Alleged Violation and, if the Alleged Violation pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, shall notify such other Applicable Governmental Authority of the Alleged Violation, within two (2) business days of receipt from the Compliance Enforcement Authority. Any such notice to FERC or to another Applicable Governmental Authority shall be provided in accordance with Section 8.0, Reporting and Disclosure.

5.4 Registered Entity Response

If the Registered Entity agrees with, does not contest, or does not respond to the notification of Alleged Violation within thirty (30) days following the date of the notification of Alleged Violation by electronic mail, it shall be deemed to have accepted the Compliance Enforcement Authority's determination of violation and Penalty or sanction, and the Compliance Enforcement Authority shall issue a Notice of Confirmed Violation or similar notification to the Registered Entity and shall report the Confirmed Violation to NERC. At the time of notifying the Registered Entity of the Confirmed Violation, the Compliance Enforcement Authority shall also provide notice to the Registered Entity that it may provide a written explanatory statement to accompany the filing with FERC and public posting of the Confirmed Violation. The Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

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If the Registered Entity contests the Alleged Violation or the proposed Penalty or sanction, the Registered Entity shall submit to the Compliance Enforcement Authority, within thirty (30) days following the date of the notification of the Alleged Violation, a response explaining its position, signed by an officer, employee, attorney or other authorized representative together with any supporting information and documents. The Compliance Enforcement Authority shall schedule a conference with the Registered Entity within ten (10) business days after receipt of the response. If the Compliance Enforcement Authority and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. The Compliance Enforcement Authority and the Registered Entity may agree in writing to extend the forty (40) day period. If no hearing request is made prior to the end of the forty (40) day period, the violation will become a Confirmed Violation.

If a hearing is requested the Compliance Enforcement Authority shall initiate the hearing process in accordance with **Attachment 2, Hearing** Procedures.

5.5 Hearing Process for Compliance Hearings

The Compliance Enforcement Authority hearing process is set forth in **Attachment 2**.

5.6 Settlement Process

The Registered Entity can request settlement negotiations at any time, including prior to the issuance of notification of an Alleged Violation; however, the Compliance Enforcement Authority may decline to engage in or to continue settlement negotiations after a Possible Violation or Alleged Violation becomes a Confirmed Violation in accordance with Section 5.4. The Registered Entity or the Compliance Enforcement Authority may terminate settlement negotiations at any time. Where the Compliance Enforcement Authority has agreed to engage in settlement negotiations, the running of the time period specified in Section 5.4 for the Registered Entity to respond to the notification of Alleged Violation is suspended until settlement negotiations are concluded or terminate. NERC shall be notified of all settlement negotiations and may participate in any settlement negotiations. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the Compliance Enforcement Authority shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf.

The Compliance Enforcement Authority may consider all relevant facts in settlement negotiations. A settlement agreement must ensure that the reliability of the Bulk Power System will not be compromised by the settlement and that a violation of a Reliability Standard will not occur as a result of the settlement. All settlement agreements must provide, if the settlement is approved, for waiver of the Registered Entity's right to further hearings and appeal.

The Compliance Enforcement Authority and the Registered Entity will execute a settlement agreement setting forth the final settlement terms including all Penalties, sanctions and mitigation requirements provided for in the final settlement.

The Compliance Enforcement Authority shall report the terms of all settlements of compliance matters to NERC. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances.

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The Registered Entity may submit an explanatory statement, conforming to the requirements of Section 5.4, to be included in the settlement agreement and which shall be subject to consent of the Compliance Enforcement Authority as part of the settlement agreement. The settlement agreement may state that the Registered Entity (i) admits the Alleged Violation, or (ii) does not contest the Alleged Violation, or (iii) neither admits nor denies the Alleged Violation, but may not state that the Registered Entity denies the Alleged Violation. Based on this review, NERC will either approve the settlement or reject the settlement and notify the Compliance Enforcement Authority of any changes to the settlement that would result in approval, and within five (5) business days the Compliance Enforcement Authority will in turn notify the Registered Entity. If NERC rejects the settlement, the Compliance Enforcement Authority will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will report the approved settlement of the violation to FERC and, if the settlement relates to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. Any such report shall be provided in accordance with Section 8.0, Reporting and Disclosure. NERC will also publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting Penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement, and a copy of any Mitigation Plan that is agreed to as part of the settlement, with any Critical Energy Infrastructure Information and Confidential Information redacted. The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all Penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Notices of Confirmed Violations are addressed in Section 8.0.

5.7 NERC Appeal Process

A Registered Entity or the Compliance Enforcement Authority may appeal the decision of a Regional Entity Hearing Body to NERC, as provided for in NERC Rules of Procedure, Section 409.

On appeal, NERC shall either affirm the decision or remand to the Compliance Enforcement Authority with reasons for its remand, which may include a direction to the Compliance Enforcement Authority to revise the decision. If NERC affirms the decision, the Compliance Enforcement Authority shall issue a Notice of Confirmed Violation to the Registered Entity. If NERC directs the Compliance Enforcement Authority to revise the decision, a Registered Entity that was the subject of the decision or the Compliance Enforcement Authority may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed.

5.8 Notification of Confirmed Violation

A Notice or other notification of Confirmed Violation issued to a Registered Entity pursuant to Sections 5.4 or 5.7 shall include a detailed record of the enforcement action, including the facts and circumstances analyzed and the information on which the Compliance Enforcement Authority relied in proposing a Penalty or sanction.

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After NERC receives a notification of Confirmed Violation from the Compliance Enforcement Authority, NERC shall review the notification of Confirmed Violation and utilize the information therein to prepare a Notice of Penalty. NERC shall advise the Compliance Enforcement Authority of any additional detail or further development of the factual findings that NERC deems necessary before the Notice of Penalty can be issued.

NERC may direct the Compliance Enforcement Authority to revise a Penalty determination, in which case the Registered Entity subject to the Penalty, or the Compliance Enforcement Authority, as applicable, may reopen the proceedings on any issue on which the Penalty was based, irrespective of whether the issue was previously litigated, settled or unopposed.

5.9 Notice of Penalty

If (i) the Registered Entity accepts the Notice of Alleged Violation and Proposed Penalty or Sanction or other notification of enforcement action from the Compliance Enforcement Authority, or (ii) a decision has been entered affirming an Alleged Violation and all appeals have been concluded, or (iii) a settlement agreement has been reached addressing the Possible Violation or Alleged Violation, NERC shall submit a Notice of Penalty to the Applicable Governmental Authority and provide a copy to the Compliance Enforcement Authority. The Compliance Enforcement Authority shall inform the Registered Entity that a Notice of Penalty is pending public filing, at least five (5) business days prior to the public filing and posting. NERC will file the Notice of Penalty with FERC and any other Applicable Governmental Authority no sooner than five (5) business days after NERC approves the Notice of Confirmed Violation or settlement agreement.

NERC shall file the Notice of Penalty with FERC and, if the Possible Violation or Alleged Violation pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. Any such filing with FERC or with another Applicable Governmental Authority shall be made in accordance with Section 8.0, Reporting and Disclosure. NERC will include with the Notice of Penalty any statement provided by the Registered Entity as set forth in Sections 5.4 or 5.6.

The Penalty or sanction will be effective upon expiration of the thirty (30) day period following filing with FERC of the Notice of Penalty (or such longer period as ordered by FERC) or, if FERC decides to review the Penalty or sanction, upon final determination by FERC.

5.10 Completion of Enforcement Action

Following FERC approval of, or expiration of the period for action by FERC on, a Notice of Penalty filed by NERC, the Compliance Enforcement Authority shall issue a payment due notice and invoice to the Registered Entity. The payment due notice and invoice shall state the payment due date which shall be thirty (30) days from the date of the payment due notice and invoice. Upon payment of all monetary Penalties by the Registered Entity, the Compliance Enforcement Authority shall issue a notice confirming payment to the Registered Entity, and provide a copy of the notice confirming payment to NERC. Following the completion by the Registered Entity of all requirements set forth in the Notice of Penalty and any settlement

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agreement, the Compliance Enforcement Authority shall issue the Registered Entity a Notice of Completion of Enforcement Action.

If the Compliance Enforcement Authority dismisses or disposes of a Possible Violation or Alleged Violation that does not become a Confirmed Violation, the Compliance Enforcement Authority shall issue a Notice of Completion of Enforcement Action to the Registered Entity.

A copy of the Notice of Completion of Enforcement Action shall also be provided to NERC by the Compliance Enforcement Authority.

The Notice of Completion of Enforcement Action shall include a release of any data retention directives that were previously issued to the Registered Entity in connection with the matter. Upon issuance of a Notice of Completion of Enforcement Action, tracking of the violation is completed, and the enforcement action shall be closed.

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

A Registered Entity that is an ISO/RTO may have authority to allocate, pursuant to a proceeding under section 205 of the Federal Power Act, some or all of a monetary Penalty imposed on the ISO/RTO for violation of a Reliability Standard, to another entity(ies) that the Compliance Enforcement Authority, NERC or FERC determines was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation of the Reliability Standard. This section sets forth the procedures to be followed when an ISO/RTO that has received a Notice of Possible Violation requests a determination by the Compliance Enforcement Authority that another entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation (if confirmed) identified in the Notice of Possible Violation.

The procedures in this section apply only where an ISO/RTO requests a determination that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation (if confirmed) identified in a Notice of Possible Violation issued to the ISO/RTO, and shall not apply where the ISO/RTO anticipates or is entitled to allocate or assign a monetary Penalty among all, or an identified segment of, its members, customers or users, pursuant to general cost recovery provisions in the ISO/RTO's tariffs, agreements or governance documents and regardless of actual fault or responsibility of the entities to whom the monetary Penalty is issued for the violation.

5.11.1 ISO/RTO's Request for Determination and Notice to Other Entity(ies)

In order to request the Compliance Enforcement Authority 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 (10) business days after receiving the Notice of Possible Violation or such additional period as the Compliance Enforcement Authority may permit for good cause shown (i) submit a written request to the Compliance Enforcement Authority and (ii) issue a notice to the specified other entity(ies), each conforming to the requirements of the following two paragraphs of this section.

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The ISO/RTO's written request to the Compliance Enforcement Authority shall contain:

- (1) the Compliance Enforcement Authority's identification number for the Notice of Possible Violation;
- (2) a statement that the ISO/RTO is requesting that the Compliance Enforcement Authority make a determination that a specified other entity(ies) was responsible, in whole or in part, for actions and omissions that caused or contributed to the violation (if confirmed) identified in the Notice of Possible Violation;
- (3) the name(s) of, and contact information for, the specified other entity(ies), including name(s) and address(es) of the entity(ies) and name(s), telephone number(s) and e-mail address(es) of the contact person(s) for the other entity(ies);
- (4) 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, and a brief explanation to show that the specified other entity(ies) are subject to the tariffs, agreements, orders and/or other governance documents; and
- (5) 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 (if confirmed) identified in the Notice of Possible Violation. As the enforcement action proceeds, the ISO/RTO may supplement, expand or modify this explanation as additional information becomes available during the course of the enforcement action.

The ISO/RTO's notice to the specified other entity(ies) shall contain the following information:

- (1) The name of the specified other entity, and the name, telephone number and e-mail address of the specified other entity's contact person (person to whom the notice is being sent);
- (2) A statement that the ISO/RTO has received a Notice of Possible Violation from the Compliance Enforcement Authority, the Compliance Enforcement Authority's identification number for the Notice of Possible Violation, and contact information for the Compliance Enforcement Authority;
- (3) A statement that the ISO/RTO has requested the Compliance Enforcement Authority to determine that the specified other entity 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, and that the ISO/RTO intends to seek to allocate to the specified other entity all or a portion of any monetary Penalty that is imposed on the ISO/RTO for the violation (if confirmed), if the Compliance Enforcement Authority determines the specified other entity 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.

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- (4) A statement that the specified other entity should promptly contact the Compliance Enforcement Authority for further information and to request to participate in the enforcement action relating to the Notice of Possible Violation.

The ISO/RTO shall cause its notice to the specified other entity(ies) to be delivered to the other entity(ies) by next-business-day delivery using a delivery service that provides verification of delivery. The ISO/RTO shall provide the Compliance Enforcement Authority with (i) a copy of the notice sent to each specified other entity, and (ii) a copy of the delivery service's verification of delivery of the notice to each specified other entity.

5.11.2 Responses of the Compliance Enforcement Authority and the Specified Other Entity(ies) to ISO/RTO's Request for Determination and Notice

If (i) the ISO/RTO's written request meets the requirements of Section 5.11.1, the Compliance Enforcement Authority shall provide the specified other entity(ies) with a copy of a non-disclosure agreement (which shall include the specified other entity's agreement to comply with the confidentiality requirements of the Compliance Program and of Section 1500 of the NERC Rules of Procedure) that must be executed to obtain a copy of the Notice of Possible Violation and a copy of the ISO/RTO's written request to the Compliance Enforcement Authority for a determination that the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation (if confirmed) identified in the Notice of Possible Violation. In addition, the Compliance Enforcement Authority shall advise the specified other entity(ies) that: (i) the specified other entity(ies) may elect not to participate in the enforcement action, and may submit a written statement to the Compliance Enforcement Authority stating why the specified other entity is not participating and providing any facts or information the other entity wishes to provide concerning the occurrence(s) that are the subject of the Notice of Possible Violation, and (ii) whether or not the specified other entity elects to participate in the enforcement action, the Compliance Enforcement Authority may determine that the specified other entity 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.

If the ISO/RTO's written request meets the requirements of Section 5.11.1, then the specified other entity(ies) shall be permitted to participate in the enforcement action concerning the Notice of Possible Violation if the other entity(ies) submits a written request to participate to the Compliance Enforcement Authority and executes a non-disclosure agreement in the form provided by the Compliance Enforcement Authority. The specified other entity must submit its written request to participate prior to, as applicable (i) the date of execution of a settlement agreement between the Compliance Enforcement Authority and the ISO/RTO, or (ii) the date that the Compliance Enforcement Authority issues a Notice of Confirmed Violation to the ISO/RTO. The Compliance Enforcement Authority is not required to suspend or delay the enforcement process pending receipt of a request to participate from the specified other entity(ies), nor to revisit or redo any aspect of the enforcement process that has already occurred prior to receipt of the specified other entity(ies)'s written request to participate; however, upon receipt of a written request to participate and executed nondisclosure agreement from the

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specified other entity(ies), the Compliance Enforcement Authority shall suspend activity in the enforcement action until it has acted on the request to participate.

Upon receiving the specified other entity's written request to participate in the enforcement action and the other entity's executed nondisclosure agreement, the Compliance Enforcement Authority 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. The Compliance Enforcement Authority's notice that the specified other entity is allowed to participate in the enforcement action shall include a copy of the Notice of Possible Violation originally issued to the ISO/RTO and, if a Notice of Alleged Violation and Proposed Penalty or Sanction or similar notification has been issued to the ISO/RTO, a copy of the latter Notice or notification. Upon receiving notice from the Compliance Enforcement Authority that it is allowed to participate in the enforcement action, the specified other entity may participate in the same manner as the ISO/RTO and shall be subject to all applicable requirements and deadlines specified in the NERC Compliance Program.

If the ISO/RO fails to meet the requirements of Section 5.11.1, the Compliance Enforcement Authority shall issue a notice to the ISO/RTO and to the specified other entity(ies) stating that the Compliance Enforcement Authority will not make the determination requested by the ISO/RTO and therefore the specified other entity will not be allowed to participate in the enforcement action relating to the Notice of Possible Violation.

5.11.3 Compliance Enforcement Authority's Notices to NERC

(a) Within five (5) business days after receiving an ISO/RTO's written request for a determination that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to a violation identified in the Notice of Possible Violation issued to the ISO/RTO, the Compliance Enforcement Authority shall provide to NERC (i) a copy of the ISO/RTO's written request for a determination that a 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, and (ii) the ISO/RTO's notice to the specified other entity(ies).

(b) On the same day that the Compliance Enforcement Authority issues a notice pursuant to Section 5.11.2 stating, as applicable, that (i) it will or will not make the determination requested by the ISO/RTO or (ii) the specified other entity(ies) are or are not allowed to participate in the enforcement action, the Compliance Enforcement Authority shall provide a copy of the notice to NERC and shall send a copy of the notice to any other entities that have been allowed to participate in the enforcement action.

5.11.4 Compliance Enforcement Authority's Determination

After issuing a notice pursuant to Section 5.11.3 that it will make a determination as to whether the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation that is the subject of the Notice of Possible Violation issued to the ISO/RTO, then, 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

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actions or omissions that caused or contributed to the violation identified in the Notice of Possible Violation, the Compliance Enforcement Authority shall make, and include in its proposed Notice of Penalty, its determination of whether or not the specified other entity(ies) were responsible, in whole or in part, for actions or omissions that caused or contributed to the violation. The Compliance Enforcement Authority'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).

The specified other entity(ies) shall be entitled to request a hearing on the Compliance Enforcement Authority's determination pursuant to Section 1.3.1 of Attachment 2 of this Appendix 4C, and to appeal the Hearing Body's decision pursuant to Section 1.7.10 of Attachment 2 to this Appendix 4C, as though the specified other entity(ies) were a Registered Entity(ies).

5.11.5 Procedure Where ISO/RTO Members Are Allowed to Directly Assign Monetary Penalties for Violations of Reliability Standards to the ISO/RTO

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 Sections 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 Sections 5.11.1, 5.11.2, and 5.11.4, subject to the same requirements and conditions specified in those sections. In such circumstances, the ISO/RTO shall be deemed to be a "specified other entity" for purposes of this Section.

5.11.6 Obligation to Pay Monetary Penalty

(a) The ISO/RTO shall be obligated and responsible to pay any monetary Penalty imposed by the Compliance Enforcement Authority on the ISO/RTO for violation of a Reliability Standard, in accordance with Section 5.10, (i) regardless of whether the Compliance Enforcement Authority 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).

(b) In an enforcement action subject to Section 5.11.5, the ISO/RTO member(s) shall be obligated and responsible to pay any monetary Penalty imposed by the Compliance Enforcement Authority on the ISO/RTO member(s) for violation of a Reliability Standard, regardless of whether or when the ISO/RTO members receive payment or reimbursement from the ISO/RTO.

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6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS

The Compliance Enforcement Authority has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting 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 Section 1500 of the Rules of Procedure 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. Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a Registered Entity believes that a request for Documents, data or information is unreasonable, the Registered Entity may request a written determination from the NERC general counsel. 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 Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data.**

6.1 Requirement for Submission of Mitigation Plans

A Registered Entity found to be in violation of a Reliability Standard shall file with the Compliance Enforcement Authority (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation. A Registered Entity may also submit a proposed Mitigation Plan at any other time, including with a Self-Report, or, without admitting it has committed a violation, in response to a Notice of Possible Violation or notification of Alleged Violation.

6.2 Contents of Mitigation Plans

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Possible, Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Possible, Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Possible, Alleged or Confirmed Violation(s).

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- The Registered Entity's action plan to correct the cause of the Possible, Alleged or Confirmed Violation.
- The Registered Entity's action plan to prevent recurrence of the Possible, Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the Bulk Power System reliability and an action plan to mitigate any increased risk to the reliability of the Bulk Power System while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Possible, Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate.

The Mitigation Plan shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity.

6.3 Timetable for Completion of Mitigation Plans

The Mitigation Plan shall be completed in accordance with its terms. At the Compliance Enforcement Authority's discretion, the completion deadline may be extended for good cause including, but not limited to: (i) operational issues such as the inability to schedule an outage to complete Mitigating Activities, and (ii) construction requirements in the Mitigation Plan that require longer to complete than originally anticipated. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by the Compliance Enforcement Authority with associated sanctions or Penalties. Regional Entities will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with Penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, the Compliance Enforcement Authority will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no Penalties or sanctions will apply. Regional Entities will also notify NERC of any such waivers of violations of Reliability Standards.

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A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the Compliance Enforcement Authority at least five (5) business days before the original milestone or completion date. The Compliance Enforcement Authority may accept a request for an extension or modification of a Mitigation Plan if the Compliance Enforcement Authority determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by the Regional Entity acting as Compliance Enforcement Authority or the Hearing Body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any Penalties or sanctions imposed for such violations.

6.4 Submission of Mitigation Plans

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the notification of Alleged Violation, if the Registered Entity does not contest the Alleged Violation and Penalty or sanction, or shall be reflected in a settlement agreement or Notice of Penalty. If the Registered Entity disputes the Alleged Violation or the Penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the Hearing Body, unless the Registered Entity elects to appeal the Hearing Body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or Penalty or sanction or in response to a Notice of Possible Violation; such submission shall not be deemed an admission of a violation or the appropriateness of a Penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the Regional Entity acting as Compliance Enforcement Authority or the Hearing Body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the Compliance Enforcement Authority before the Hearing Body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans

Unless the time period is extended by the Compliance Enforcement Authority, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. In order to extend the initial or an extended period for review of the Mitigation Plan, the Compliance Enforcement Authority shall, within the initial or extended review period, notify the Registered Entity (and NERC if NERC is not the Compliance Enforcement Authority) that the review period is being extended and identify the date by which the Compliance Enforcement Authority will complete its review of the Mitigation Plan. The Compliance Enforcement Authority's extension notice shall also state that if the Compliance Enforcement Authority has not issued a notice by the end of the extended review period either stating that the Compliance Enforcement Authority accepts or rejects the proposed Mitigation Plan or further extending the Compliance Enforcement Authority's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted.

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If the Compliance Enforcement Authority rejects a Mitigation Plan, the Compliance Enforcement Authority will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The Compliance Enforcement Authority will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the Compliance Enforcement Authority will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedures, by submitting to the Compliance Enforcement Authority a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the Compliance Enforcement Authority will issue a written statement accepting a Mitigation Plan it deems as appropriate.

Within five (5) business days after a Regional Entity accepts a Mitigation Plan, the Regional Entity (i) will notify NERC and the Registered Entity of the acceptance of the Mitigation Plan and (ii) will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and, within thirty (30) days following its receipt of the Mitigation Plan from the Regional Entity, will notify the Regional Entity and the Registered Entity, on a contemporaneous basis, as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the Regional Entity, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. The Registered Entity shall not be subject to findings of violations of the specific Requirements of Reliability Standards that are the subject of the Mitigation Plan or to imposition of Penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC's disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC.

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

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Regional Entity shall issue such notice within five (5) business days of issuance of the Notice of Confirmed Violation or entry into the settlement.

NERC will submit to FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC shall publicly post the approved Mitigation Plan as part of the public posting of the related Notice of Penalty in accordance with Section 8.0 or settlement in accordance with Section 5.6.

6.6 Completion/Confirmation of Implementation of Mitigation Plans

The Registered Entity shall provide updates at least quarterly to the Compliance Enforcement Authority on the progress of the Mitigation Plan. The Compliance Enforcement Authority will track the Mitigation Plan to completion and may conduct on-site visits and review status during Compliance Audit to monitor Mitigation Plan implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to the Compliance Enforcement Authority certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for the Compliance Enforcement Authority to verify completion. The Compliance Enforcement Authority shall request such data or information and conduct follow-up assessments, on-site or other Spot Checks, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed.

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the Compliance Enforcement Authority. In addition, the Compliance Enforcement Authority may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

Upon request by NERC, the Regional Entity will provide to NERC the quarterly status reports and such other information as NERC requests. The Regional Entity will notify NERC when each Mitigation Plan is verified to have been completed.

6.7 Recordkeeping

The Compliance Enforcement Authority will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Report, Compliance Audit, Compliance Investigation, Complaint, etc.

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- Date(s) of Notice of Possible Violation and notification of Alleged Violation (if applicable).
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.

7.0 REMEDIAL ACTION DIRECTIVES

The Compliance Enforcement Authority may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to a Possible Violation or an Alleged Violation of a Reliability Standard. The Compliance Enforcement Authority will specify whether a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, the Compliance Enforcement Authority shall consult the Reliability Coordinator for the Registered Entity.

Any Remedial Action Directive must be provided in a notice to the Registered Entity and shall include: (i) a list of the Possible Violation(s) or Alleged Violation(s) of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) the requirements the Compliance Enforcement Authority is imposing to remove the imminent or actual threat to the reliability of the Bulk Power System; (iv) a deadline for compliance and a schedule for specific periodic updates to the Compliance Enforcement Authority; and (v) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions.

The Compliance Enforcement Authority will cause the notice of the Remedial Action Directive to be delivered to the Registered Entity by (i) electronic mail to the Registered Entity's CEO or equivalent and copied to the Registered Entity's designated contact person for reliability matters and (ii) by a recognized express courier service that provides tracking and verification of

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delivery to the recipient. 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 as specified by the express courier service's verification of delivery. The Compliance Enforcement Authority will monitor implementation of Remedial Action Directives as necessary to verify compliance.

The Compliance Enforcement Authority will notify NERC within two (2) business days after issuing a Remedial Action Directive and will copy NERC on all correspondence sent to the Registered Entity.

Once the Compliance Enforcement Authority has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to the Compliance Enforcement Authority within two (2) business days following the date of actual receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures**. Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures** shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive until the hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

8.0 REPORTING AND DISCLOSURE

8.1 Information to be Reported

Regional Entities shall promptly submit to NERC electronic reports containing current information concerning the information listed below. NERC will work with Regional Entities to specify form, content, timing, and method of submitting reports and notices.

- (1) The status of the review and assessment of all Possible Violations, Alleged Violations and Confirmed Violations of Reliability Standards by Registered Entities,
- (2) The potential impact of any Alleged Violation or Confirmed Violation on the reliability of the Bulk Power System,
- (3) Sanctions and Penalties,
- (4) Remedial Action Directives imposed,
- (5) Mitigation Plans, and
- (6) The name of a Regional Entity staff person knowledgeable about the information to serve as a point of contact.

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8.2 Reporting to Applicable Governmental Authorities and Public Disclosure

Within two (2) business days of receiving a report from a Regional Entity of a Possible Violation, Alleged Violation, or Confirmed Violation, NERC shall notify FERC of the Possible Violation, Alleged Violation or Confirmed Violation.

Where the report pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, NERC shall notify such other Applicable Governmental Authority, within two (2) business days of receiving a report of a Possible Violation, Alleged Violation or Confirmed Violation from the Regional Entity; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure. Likewise, NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the Bulk Power System to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities. The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity's compliance with a requirement of a Reliability Standard. NERC will publicly post on its website each Notice of Penalty, with any Critical Energy Infrastructure Information or other Confidential Information redacted (unless posting of the Critical Energy Infrastructure Information or Confidential Information has been determined to be permissible in accordance with Section 1500 of the Rules of Procedure) , together with any statement submitted by the Registered Entity, when NERC files the Notice of Penalty with FERC pursuant to Section 5.9.

NERC will provide reports quarterly to FERC and, where a report contains information pertaining to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, on the status of all Possible, Alleged and Confirmed Violations for which mitigation activities have not been completed. All such reports to FERC and to other Applicable Governmental Authorities shall be provided in accordance with this Section.

9.0 DATA RETENTION AND CONFIDENTIALITY

9.1 Records Management

The Compliance Enforcement Authority records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the

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Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

9.2 Retention Requirements

The Compliance Enforcement Authority records management policy will require that information and data generated or received pursuant to Compliance Program activities, including Compliance Audits, Self-Certifications, Spot Checks, Compliance Investigations, Self-Reports, Periodic Data Submittals, Exception Reporting, and Complaints, as well as a hearing process, will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC or another Applicable Governmental Authority. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

Upon request from NERC, Regional Entities will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity under the Compliance Program. In providing the information and data to NERC, the Regional Entity shall preserve any mark of confidentiality.

9.3 Confidentiality and Critical Energy Infrastructure Information

9.3.1 Definitions

Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “Confidential Information,” “Confidential Business and Market Information,” “Critical Energy Infrastructure Information,” and “Critical Infrastructure” shall have the meanings stated in Appendix 2 to the NERC Rules of Procedure.

9.3.2 Protection of Confidential Information

The Compliance Enforcement Authority personnel (including any contractors, consultants and industry subject matter experts) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning Confidential Information.

9.3.3 Critical Energy Infrastructure Information

The Compliance Enforcement Authority will keep confidential all Critical Energy Infrastructure Information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be Critical Energy Infrastructure Information shall be redacted, in accordance with Section 1500 of the NERC Rules of Procedure, and shall not be released publicly.

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ATTACHMENT 1

PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

FERC's regulations at 18 C.F.R §39.2(d) provide that each user, owner or operator of the Bulk Power System within the United States (other than Alaska and Hawaii) shall provide FERC, the ERO and the applicable Regional Entity such information as is necessary to implement section 215 of the Federal Power Act as determined by FERC and set out in the rules of the ERO and each Regional Entity. In order to enforce this requirement, if data, information, or other reports (including Mitigation Plans) requested from a Registered Entity in connection with a compliance monitoring process or enforcement process are not received by the Required Date, the Compliance Enforcement Authority may sequentially execute the following steps for each Reliability Standard Requirement for which the Compliance Enforcement Authority has requested data, information, or other reports. However, 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 Compliance Enforcement Authority may afford the Registered Entity reasonable additional time to submit the data, information or report 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.

- Step 1: The Compliance Enforcement Authority will issue a notification to the Registered Entity's designated contact for reliability matters, identifying the data, information or report that were requested or required and the Required Date and stating that the Required Date has passed and the Registered Entity should, within five (5) business days, either provide the data, information or report, or contact the Compliance Enforcement Authority with a proposed date by which the Registered Entity will provide the data, information or report. If the Compliance Enforcement Authority agrees with the Registered Entity on a revised date by which the Registered Entity will provide the data, information or report, the agreed revised date shall become the Revised Required Date.
- Step2: If the Registered Entity does not provide a response to the notification in, and in accordance with, Step 1, within five (5) business days, or by a revised date as agreed to in Step 1, the Compliance Enforcement Authority will issue a notification to the Registered Entity's designated contact for reliability matters, with a copy to the Registered Entity's chief executive officer or equivalent, stating that if the data, information or report is not received within ten (10) business days, the Compliance Enforcement Authority may (i) implement a compliance monitoring process directed to the Registered Entity, or (ii) issue a Notice or other notification of Alleged Violation and Proposed Penalty or Sanction at the Severe Violation Severity Level to the Registered Entity for the Reliability Standard Requirement to which the requested or required

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data, information or report relates.

- Step 3: If the Registered Entity fails to produce the requested or required data, information or report in response to the notification in Step 2 within the ten (10) business day cure period set forth in the Step 2 notification, the Compliance Enforcement Authority may take any action of which the Registered Entity was notified in the Step 2 notification, including issuing 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.

The process described in this 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 (Steps 1 and 2 above) by the stated deadline. This 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 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 Compliance Enforcement Authority in good faith to respond to the request or requirement for data, information or reports, as modified if appropriate by the Compliance Enforcement Authority based on questions raised by the Registered Entity.

ATTACHMENT 2 - HEARING PROCEDURES

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ATTACHMENT 2 - HEARING PROCEDURES

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

- (a) The provisions set forth in this **Attachment 2** (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance Enforcement Authority in hearings in the United States conducted into:
- (1) whether Registered Entities within the Compliance Enforcement Authority’s Area of Responsibility have violated Reliability Standards, and
 - (2) if so, to determine the appropriate Mitigation Plans as well as any Remedial Action Directives, Penalties and/or sanctions in accordance with the NERC *Sanction Guidelines* and other applicable Penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2).
- (b) Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Officer and a Hearing Body established by the Compliance Enforcement Authority. Where the Hearing Body is comprised, in whole or in part, of industry stakeholders, the composition of the Hearing Body, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Body on any matter brought before it for decision. Where the Hearing Body is comprised solely of independent members and an independent hearing Officer, decisions shall require a majority vote.
- (c) The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a Penalty, opposing a Registered Entity’s Mitigation Plan, or requiring compliance with a Remedial Action Directive.
- (d) 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 Compliance Enforcement Authority have entered into a settlement agreement resolving the matters that are the subject of the hearing, the hearing shall be terminated by the Hearing Body and no further proceedings shall be conducted before the Hearing Body.

1.1.2 Deviation

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer or the Hearing Body, for good cause shown, either upon the Hearing Officer’s or the Hearing Body’s own motion or upon the motion of any Participant.

1.1.3 Standards for Discretion

The Compliance Enforcement Authority's discretion under these Hearing Procedures shall be exercised to accomplish the following goals:

- (a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- (b) Fairness - Persons appearing in Compliance Enforcement Authority proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant's failure to act diligently and in good faith.
- (c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.
- (d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the Compliance Enforcement Authority's conflict of interest policy.
- (e) Impartiality - Persons appearing before the Hearing Body should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- (f) Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

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

1.1.5 Definitions

Unless otherwise defined, as used in these Hearing Procedures, definitions in Appendix 2 of the NERC Rules of Procedure shall apply. For ease of reference, the following defined terms used in these Hearing Procedures are also set forth below:

“Clerk” shall mean an individual assigned by the Compliance Enforcement Authority to perform administrative tasks relating to the conduct of hearings as described in these Hearing Procedures.

“Compliance Enforcement Authority’s Area of Responsibility” means the Compliance Enforcement Authority’s Region. If a Regional Entity is the Compliance Enforcement Authority, the Compliance Enforcement Authority’s Area of Responsibility is shown in Exhibit A to the delegation agreement between the Regional Entity and NERC.

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

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

“Cyber Security Incident” means any malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk Power System.

“Director of Compliance” means the Director of Compliance of NERC or of the Compliance Enforcement Authority, as applicable, or other individual designated by the Compliance Enforcement Authority, who is responsible for the management and supervision of Compliance Staff, or his or her designee.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“ERO” or “Electric Reliability Organization” means the organization that is certified by the Commission under Section 39.3 of its regulations, the purpose of which is to establish and enforce Reliability Standards for the Bulk Power System in the United States, subject to Commission review. The organization may also have received recognition by Applicable Governmental Authorities in Canada and Mexico to establish and enforce Reliability Standards for the Bulk Power Systems of the respective countries.

“Evidentiary Hearing” means a hearing at which one or more Participants submits evidence for the record. A Testimonial Hearing is an Evidentiary Hearing, but an Evidentiary Hearing does not necessarily include the presentation of testimony by witnesses in person.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Body” means the body established or designated by the Compliance Enforcement Authority to conduct hearings and issue decisions concerning disputed compliance matters in accordance with these Hearing Procedures.

“Hearing Officer” means an individual employed or contracted by the Compliance Enforcement Authority and designated by the Compliance Enforcement Authority to preside over hearings conducted pursuant to these Hearing Procedures.

“Participant” means a Respondent and any other Person who is allowed or required by the Hearing Body or by FERC to participate as an intervenor in a proceeding conducted pursuant to these Hearing Procedures, and as used in these Hearing Procedures shall include the members of the Compliance Staff of the Compliance Enforcement Authority that participate in a proceeding.

“Penalty” means and includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity or Respondent to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s or Respondent’s violation and take into consideration any timely efforts made by the Registered Entity or Respondent to remedy the violation.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Respondent” means the Registered Entity who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive that is the basis for the proceeding, whichever is applicable.

“Staff” or “Compliance Staff” means individuals employed or contracted by NERC or the Compliance Enforcement Authority who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans.

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

“Testimonial Hearing” means an Evidentiary Hearing at which the witness or witnesses on behalf of one or more Participants appears in person to present testimony and be subject to cross-examination.

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

All filings made with the Hearing Body must contain:

- (a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;
- (b) A heading that describes the filing and the Participant on whose behalf the filing is made;
- (c) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;
- (d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record of the hearing, if available, or other evidence; and
- (e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

1.2.2 Form of Filings

- (a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- (b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- (c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- (d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- (e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log,

graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

1.2.3 Submission of Documents

(a) Where to File

Filings shall be made with the Clerk of the Compliance Enforcement Authority located at its principal office. The office will be open during the Compliance Enforcement Authority's regular business hours each day except Saturday, Sunday, legal holidays and any other day declared by the Compliance Enforcement Authority.

(b) When to File

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Body. Filings will be considered made when they are date stamped received by the Clerk. To be timely, filings must be received no later 5:00 P.M. local time on the date specified.

(c) How to File

Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made. Alternatively, filing by electronic means will be acceptable upon implementation of a suitable and secure system by the Compliance Enforcement Authority.

(d) Number of Copies to File

One original and five exact copies of any document shall be filed. The Clerk will provide each member of the Hearing Body with a copy of each filing.

(e) Signature

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff.

(f) Verification

The facts alleged in a filing need not be verified unless required by these Hearing Procedures, the Hearing Officer or the Hearing Body. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be included in or attached to the verification explaining why a person other than the signer is providing verification.

(g) Certificate of Service

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

1.2.4 Service

(a) Service List

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

b) By Participants

Subject to the provisions of Section 1.5.10, any Participant filing a Document in a proceeding must serve a copy of the Document on each individual whose name is on the service list for the proceeding. Unless otherwise provided, service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

(c) By the Clerk

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

(d) Effective Date of Service

Service by personal delivery or email is effective immediately. Service by mail or registered mail is effective upon mailing; service by a private express courier service is effective upon delivery to the private express courier service. Unless otherwise provided, whenever a Participant has the right or is required to do some act within a prescribed period after the service

of a document upon the Participant, four (4) days shall be added to the prescribed period when the document is served upon the Participant by mail or registered mail.

1.2.5 Computation of Time

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which the office of the Compliance Enforcement Authority is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the office of the Compliance Enforcement Authority is closed.

1.2.6 Extensions of Time

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

1.2.7 Amendments

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

1.2.8 Transcripts

- (a) A full and complete record of all hearings, including any oral argument, shall be transcribed verbatim by a certified court reporter, except that the Hearing Officer may allow off-the-record discussion of any matter provided the Hearing Officer states the ruling on any such matter, and the Participants state their positions or agreement in relation thereto, on the record. The court reporter shall file a copy of each transcript with the Clerk. 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.
- (b) Unless otherwise prescribed by the Hearing Officer, a Participant may file and serve suggested corrections to any portion of a transcript within fourteen (14) days from the date of the Clerk's notice that the transcript has been filed with the Clerk, and any responses shall be filed within ten (10) days after service of the suggested corrections. The Hearing Officer shall determine what changes, if any, shall be made, and shall only allow changes that conform the transcript to the statements being transcribed and ensure the accuracy of the record.

- (c) The Compliance Enforcement Authority will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for Staff. Any other Participant shall pay for its own copy of the transcript if it chooses to obtain one and, should any Participant seek to obtain a copy of the transcript on an expedited basis, it shall pay for the expedited transcription services.

1.2.9 Rulings, Notices, Orders and Other Issuances

Any action taken by the Hearing Officer or the Hearing Body shall be recorded in a ruling, notice, order or other applicable issuance, or stated on the record for recordation in the transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the Hearing Body. All notices of hearings shall set forth the date, time and place of hearing.

1.2.10 Location of Hearings and Conferences

All hearings and oral arguments shall be held at the principal office of the Compliance Enforcement Authority unless the Hearing Officer or Hearing Body designates a different location.

1.2.11 Participant Participation

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer and, in the event of oral argument, the Hearing Body, except as required by Section 1.6.6. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

1.2.12 Interventions

(a) The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by the Hearing Body or by FERC, no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

(b) 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, or Remedial Action Directive that is the subject of the proceeding. Examples of a direct and substantial interest in the outcome shall include

- (1) that the Person seeking intervention has received a Notice of Alleged Violation or a Remedial Action Directive involving the same Reliability Standard requirement(s) and arising out of the same event or occurrence as the existing Respondent(s) that is the subject of the proceeding, or
- (2) 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, provided, that after the Person seeking intervention sufficiently demonstrates it will or may be contractually or legally liable for payment of all or a portion of the proposed Penalty or sanction to be granted intervention, the Person granted intervention and

the existing Respondents will not be allowed to litigate in the proceeding whether the Person granted intervention is contractually or legally liable for payment of all or a portion of the proposed Penalty or sanction or the amount of the proposed Penalty or Sanction for which the Person granted intervention is or may be liable.

That the Person seeking intervention has received a Notice of Alleged Violation for the same Reliability Standard Requirement(s) as the original Respondent(s) but arising out of a different event or occurrence; or seeks to intervene to advocate an interpretation of the Reliability Standard Requirement(s) or provision(s) of the *Sanction Guidelines*, that are at issue in the proceeding, without more, shall not constitute a direct and substantial interest in the outcome and shall not be grounds on which the Hearing Body may allow the Person to intervene.

(c) A Person seeking intervention shall do so by filing a motion to intervene with the Clerk. The motion shall state the Person's interest in sufficient factual detail to demonstrate that the Person should be allowed to intervene pursuant to Section 1.2.12(b). The motion to intervene shall also state the Person's agreement to maintain the confidential and non-public nature of the hearing, including all pleadings and other Documents filed or exchanged in connection with the request for intervention. Any facts alleged in, or offers of proof made in, the motion to intervene shall be supported by affidavit or verification.

(d) The Clerk shall promptly provide copies of the motion to intervene to the Hearing Officer and the Participants. The Hearing Officer shall promptly set a time period, not to exceed seven (7) days, within which the Participants may file responses to the motion to intervene. Within seven (7) days following the end of the response period, the Hearing Officer shall issue a recommendation to the Hearing Body as to whether or not the motion to intervene should be granted.

(e) The Hearing Body may, within seven (7) days following the date of the Hearing Officer's recommendation, issue a decision granting or denying the motion to intervene. If the Hearing Body does not issue a decision granting or denying the motion to intervene within seven (7) days following the date of the Hearing Officer's recommendation, the Hearing Officer's recommendation shall become the decision of the Hearing Body and the motion to intervene shall be deemed granted or denied by the Hearing Body in accordance with the Hearing Officer's recommendation.

(f) The Hearing Officer, on motion of a Participant or on his or her own motion, or the Hearing Body, on recommendation by the Hearing Officer or its own motion, may stay or suspend the proceeding while a request to intervene, including a request to intervene filed directly with FERC, and including any appeal of the grant or denial of the request to intervene, is being resolved.

(g) A Person allowed to intervene and become a Participant to a proceeding shall be designated as a Respondent and deemed to be aligned with the existing Respondent(s), unless the Hearing Body, in the decision granting intervention, states that the Person allowed to intervene shall be deemed to be aligned with another Participant to the proceeding.

(h) A Person allowed to intervene and become a Participant to a proceeding is required to take the record and the procedural status of the proceeding as it stands on the date the Person's motion to intervene is granted by the Hearing Body.

(i) A Person may appeal a decision of the Hearing Body denying the Person's motion to intervene, and the Compliance Staff, the Respondent or any other Participant may appeal a decision granting or denying a motion to intervene, in accordance with Section 414 of the NERC Rules of Procedure. A notice of appeal shall be filed with the NERC director of enforcement no later than seven (7) days following the date of the decision of the Hearing Body granting or denying the motion to intervene.

1.2.13 Proceedings Closed to the Public

No hearing, oral argument or meeting of the Hearing Body shall be open to the public, and no notice, ruling, order or any other issuance of the Hearing Officer or Hearing Body, or any transcript, made in any proceeding shall be publicly released unless the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) determine that public release is appropriate. Only the members of the Hearing Body, the Participants, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding.

1.2.14 Docketing System

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the filing of a request for a hearing. Unless NERC provides a different docketing system that will be used uniformly by the Compliance Enforcement Authorities, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "[RE]", followed by a dash ("-"), followed by a four digit number that will be "0001" on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

1.2.15 Representations Deemed to be Made in All Pleadings

A Participant presenting any pleading to the Hearing Officer or Hearing Body shall be deemed to certify that to the best of the Participant's knowledge, information and belief, formed after and based on an inquiry that is reasonable under the circumstances:

- (a) the factual allegations set forth in the pleading have or will have support in the evidence or the Participant believes they will have support in the evidence after reasonable opportunity for further investigation or discovery;
- (b) the denials in the pleading of factual allegations made by another Participant are warranted by or will be warranted by the evidence or, if specifically so identified, are reasonably based on belief or on a lack of information;

- (c) the claims, defenses and other contentions set forth in the pleading are warranted based on the applicable Reliability Standard Requirement(s) or Rules of Procedure provisions; and
- (d) the pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the hearing or the cost incurred by any Participant.

1.2.16 Hold Harmless

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the Compliance Enforcement Authority, including without limitation its members, board of directors or trustees, compliance committee, any other committees or subcommittees, Staff, contracted employees, Hearing Body members, Hearing Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This “hold harmless” provision does not extend to matters constituting gross negligence, intentional misconduct or breach of confidentiality.

1.3 Initiation of the Hearing Process

1.3.1 Registered Entity’s Option to Request a Hearing

- (a) Except when contesting a Remedial Action Directive pursuant to Section 1.9 of these Hearing Procedures, a Registered Entity may file a statement, in accordance with Section 1.3.1(e), with the Compliance Enforcement Authority requesting a hearing if either:
 - (1) The Registered Entity files a response to a Notice of Alleged Violation that contests either the Alleged Violation, the proposed Penalty, or both; or
 - (2) The Compliance Staff submits to the Registered Entity a statement rejecting the Registered Entity’s proposed revised Mitigation Plan submitted after Compliance Staff rejected the Registered Entity’s initial proposed Mitigation Plan.
- (b) A Registered Entity must file its hearing request within forty (40) days after
 - (1) the Registered Entity files its response to the Notice of Alleged Violation; or
 - (2) the Compliance Staff submits to the Registered Entity its statement identifying a disagreement with the Registered Entity’s proposed Mitigation Plan, whichever is applicable.
- (c) If the Registered Entity does not file a hearing request within the time period set forth in this Section, then the Registered Entity will be deemed to have agreed and waived any objection to the proposed Penalty, the Alleged Violation or the Compliance Staff’s rejection of the revised Mitigation Plan, whichever is applicable.

(d) In accordance with Section 5.3 of the Compliance Program, a Notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its rejection of a Registered Entity's proposed revised Mitigation Plan shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff's rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Section 1.3.4 or the general hearing procedure described in Sections 1.4 to 1.7.

(e) The Registered Entity's statement requesting a hearing shall:

- (1) contain a plain and concise statement of the facts and arguments supporting the Registered Entity's position, as applicable, that it did not violate the Reliability Standard Requirement(s) set forth in the Notice of Alleged Violation, that the proposed Penalty or sanction is too high and should be reduced, or that the Registered Entity's proposed Mitigation Plan should be approved;
- (2) state the relief that the Registered Entity requests the Hearing Body to grant; and
- (3) state whether the Registered Entity requests the shortened hearing procedure or the general hearing procedure.

The Registered Entity's statement may set forth two or more alternative grounds on which the Registered Entity bases its position, as applicable, that it did not violate the Reliability Standard Requirement(s) set forth in the Notice of Alleged Violation, that the proposed Penalty or sanction is too high and should be reduced, or that the Registered Entity's proposed Mitigation Plan should be approved.

(f) If the Registered Entity (or any Respondent if there are more than one Respondent) requests the general hearing procedure, the general hearing procedure shall apply. If the Registered Entity (or all Respondents if there are more than one Respondent) requests the shortened hearing procedure, Compliance Staff and any other Participants shall submit a filing within five (5) days of the Registered Entity's hearing request that states whether Staff or such other Participant agrees to use the shortened hearing procedure. If Staff or another Participant makes a filing requesting the general hearing procedure, then the general hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity or Entities shall be used. Once either the general or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

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

- (1) The Registered Entity's Self-Report of a violation;
- (2) The Notice of Alleged Violation and the Registered Entity's response thereto; and/or
- (3) The Registered Entity's proposed revised Mitigation Plan and the Compliance Staff's statement rejecting the proposed revised Mitigation Plan.

1.3.2 Compliance Staff's Response to Request for Hearing

- (a) If the Registered Entity's request for hearing requests that the shortened hearing procedure be used, the Compliance Staff shall file a response stating whether it agrees to the use of the shortened hearing procedure.
- (b) If the Registered Entity's request for hearing requests that the Registered Entity's proposed revised Mitigation Plan should be approved, the Compliance Staff shall file a response stating the Compliance Staff's position as to why the Registered Entity's proposed revised Mitigation Plan should not be approved and setting forth any additional terms that the Compliance Staff believes should be included in the Mitigation Plan.
- (c) If the Registered Entity's request for hearing does not request that the shortened hearing procedure be used and does not request that the Registered Entity's proposed revised Mitigation Plan should be approved, the Compliance Staff may, but is not required to, file a response stating, as applicable, the basis for the Compliance Staff's position that the Registered Entity violated the Reliability Standard Requirement(s) specified in the Notice of Alleged Violation or that the proposed Penalty or sanction is appropriate under the *Sanction Guidelines* and should not be reduced.
- (d) Any response by the Compliance Staff required or permitted by this Section shall be filed within fifteen (15) days after the date the request for hearing was filed, unless the Hearing Officer or Hearing Body allows a longer time to file the response.

1.3.3 Notice of Hearing

- (a) The Clerk shall issue a notice of hearing not less than sixteen (16) days, and not more than twenty-one (21) days, after the Registered Entity files its request for hearing.
- (b) The notice of hearing shall state whether the shortened hearing procedure or the general hearing procedure will be used.
- (c) The notice of hearing shall identify the Hearing Officer and the date, time and place for the initial prehearing conference.
 - (1) If the shortened hearing procedure is to be used, the initial prehearing conference shall be set for a date within seven (7) days following the date of the notice of hearing.
 - (2) If the general hearing procedure is to be used, the initial prehearing conference shall be set for a date within fourteen (14) days following the date of the notice of hearing.

1.3.4 Shortened Hearing Procedure

The shortened hearing procedure shall be as set forth in this Section. The rules applicable to the general hearing procedure shall apply to the shortened hearing procedure unless the context of such a rule is inconsistent with the procedure set forth in this Section or otherwise renders it inapplicable to the shortened hearing procedure. The rules concerning ex parte communications

in Section 1.4.7 are hereby expressly made applicable to the shortened hearing procedure under this Section.

The Hearing Body shall utilize a Hearing Officer to preside over the shortened hearing procedure in accordance with Section 1.4.2. But, no Testimonial Hearing will be held in the shortened hearing procedure and the Participants will not present witness testimony or file briefs, except that briefs on exceptions and briefs in reply to exceptions may be allowed pursuant to subsection (g). Instead, the following events shall take place within the following periods:

- (a) The initial prehearing conference shall be held within seven (7) days after the date on which the notice of hearing is issued. In addition to any other matters set forth in Section 1.5.2 that may apply, the initial prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with subsections (c) through (e).
- (b) Within ten (10) days after the date on which the notice of hearing is issued, Staff shall make Documents available to the Registered Entity for inspection and copying pursuant to Section 1.5.7.
- (c) Within twenty-one (21) days after the initial prehearing conference, the Staff shall file:
 - (1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
 - (2) all Documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - (3) a verification attesting to the truthfulness of the facts alleged in the filing.
- (d) Within fourteen (14) days of Staff's initial comment filing pursuant to subsection (c), the Registered Entity shall file:
 - (1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;
 - (2) all Documents that the Registered Entity seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - (3) a verification attesting to the truthfulness of the facts alleged in the filing.
- (e) Within seven (7) days after the Registered Entity's responsive comment filing pursuant to subsection (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional Documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional Documents in support of its position based upon such a

motion, the Registered Entity shall have the right to file additional Documents in support of its position that are responsive to the additional Documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.

- (f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days after the Staff's reply comments filing or any additional filing by the Registered Entity pursuant to subsection (e).
- (g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days after the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "brief on exceptions" in accordance with Section 1.7.5 and within seven (7) days thereafter, a reply brief designated "brief in reply to exceptions."
- (h) The Hearing Body shall strive, but is not required, to issue a final order within one hundred twenty (120) days of the notice of hearing.

The Hearing Officer or Hearing Body may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Body to issue the final order within one hundred twenty (120) days of the notice of hearing.

1.4 General Hearing Procedure

1.4.1 [Intentionally Left Blank]

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1.4.2 Hearing Officer

(a) The Compliance Enforcement Authority shall utilize a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing Officer's actions shall be subject to the authority of the Hearing Body as set forth in Section 1.4.3. Members of the Hearing Body may attend any aspect of the hearing.

(b) The Hearing Officer is responsible for the conduct of the hearing, including administering the hearing from the initial prehearing conference through the issuance of the Hearing Officer's initial opinion, any administrative hearing functions thereafter, and submission of the matter to the Hearing Body for final decision through the presentation to the Hearing Body of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- (1) To administer oaths and affirmations;
- (2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;

- (3) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- (4) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- (5) To supervise and issue orders concerning discovery;
- (6) To conduct prehearing conferences, status hearings and Evidentiary Hearings;
- (7) To hear argument on all objections, motions and other requests, and to rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- (8) To rule on and receive evidence;
- (9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- (10) To issue protective orders pursuant to Section 1.5.10;
- (11) To issue initial opinions; and
- (12) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

(c) The Compliance Enforcement Authority shall disclose the employment history and professional affiliations of the Hearing Officer within two (2) days of the Hearing Officer's assignment to the proceeding, and Participants to the hearing may raise objections to the Hearing Officer's participation in accordance with Section 1.4.5.

1.4.3 Hearing Body

(a) 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 on any matter brought before it for decision.

(b) The Hearing Body is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:

- (1) 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. Any member of the Hearing Body may request of, and shall receive from, the Clerk, a

copy of any filing by a Participant. The Hearing Body shall not receive Documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such Documents are placed into the record pursuant to Section 1.6.7.

- (2) The Clerk shall send all issuances of the Hearing Officer to the members of the Hearing Body.
- (3) The Hearing Body or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or Evidentiary Hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any hearing. At any prehearing conference or hearing attended by a member of the Hearing Body, any member of the Hearing Body may ask questions directly of any Participant or witness.
- (4) The Hearing Body shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-Evidentiary Hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the Hearing Body shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
- (5) To the extent that the Hearing Body disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review meeting the requirements of Section 1.4.4, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.
- (6) The Hearing Body shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the Hearing Body shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

1.4.4 Interlocutory Review

(a) A Participant shall be allowed to seek interlocutory review by the Hearing Body of any ruling of the Hearing Officer where the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding. Failure to seek such review shall not operate as a waiver of any objection to such ruling.

(b) Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the Hearing Body, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The

petition shall be filed with any offer of proof and supported by references to the record, or by affidavit if based on facts that do not appear in the record. Responses to petitions for interlocutory review shall be filed within seven (7) days after service of the petition. No replies to responses shall be allowed.

(c) The Hearing Officer shall file a report to the Hearing Body within fourteen (14) days from the filing of the petition. The Hearing Officer's report shall set forth the relevant facts and other background information relating to the ruling on which interlocutory review is sought, the basis for the Hearing Officer's ruling, a summary of the Participants' arguments on the petition for interlocutory review, and the recommendation of the Hearing Officer for the disposition of the petition by the Hearing Body.

(d) On review of a Hearing Officer's ruling, the Hearing Body may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. The Hearing Body may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments.

(e) Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Section 1.7.8) of the Hearing Body, and (ii) majority vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the Hearing Body's action taken on interlocutory review shall not be allowed. Filing and disposition of a petition for interlocutory review of a ruling of the Hearing Officer shall not suspend or otherwise delay a hearing or any other scheduled dates in the proceeding except as authorized by the Hearing Officer or the Hearing Body based on a finding of exceptional circumstances.

(f) A non-Participant that has been ordered by the Hearing Officer pursuant to Section 1.5.8 to produce or provide Documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the Hearing Body of the Hearing Officer's order, with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to Section 1.5.8, and (ii) the reasonableness of the Hearing Officer's order to produce or provide Documents, information or testimony.

1.4.5 Disqualification

(a) A Hearing Officer, Technical Advisor or member of the Hearing Body shall recuse himself or herself from a proceeding if participation would violate the Compliance Enforcement Authority's applicable conflict of interest policy.

(b) Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the Hearing Body from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by section 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A

motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

(c) The Hearing Officer shall issue a proposed ruling for the Hearing Body's consideration upon the filing of a motion for disqualification unless the Hearing Officer is the subject of the motion. The Hearing Body, without the participation of any member who is the subject of the motion, shall issue a final ruling on the motion. If the Hearing Officer recuses himself or herself or is disqualified, the Hearing Body will appoint a replacement Hearing Officer. To ensure fairness to the Participants and expedite completion of the proceeding when a replacement Hearing Officer is appointed after a hearing has commenced, the replacement Hearing Officer may recall any witness or may take other steps necessary to ensure familiarity with any part or all of the record.

(d) If a quorum (as defined in Section 1.7.8) of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, then the Compliance Enforcement Authority shall appoint at least the number of new members to the Hearing Body necessary to create a quorum. The new member(s) shall serve on the Hearing Body through the conclusion of the proceeding but not thereafter. Any new member of the Hearing Body shall be subject to the provisions applicable herein to all Hearing Body members.

1.4.6 Technical Advisor

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

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

1.4.7 No Ex Parte Communications

(a) Once a Registered Entity requests a hearing pursuant to Section 1.3.1:

- (1) neither the Hearing Body, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that

- (2) the Hearing Body, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
 - (A) in writing if the writing is simultaneously provided to all Participants; or
 - (B) orally if a representative for every Participant is present in person or by telephone;
 - (C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- (b) Exceptions
 - (1) The proscription in subsection (a)(1) does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof on any topic, provided that any member of the Compliance Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
 - (2) The proscription in subsection (a)(1) does not prohibit communications between or among members of the Hearing Body, the Hearing Officer and any Technical Advisor.
 - (3) The proscription in subsection (a)(1) does not prohibit 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 and other procedural matters relating to the proceeding.
 - (4) The proscription in subsection (a)(1) does not prohibit communications between or among the Clerk, the Hearing Body and representatives of the Compliance Enforcement Authority for purposes of establishing the hearing forum.
- (c) Any member of the Hearing Body, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly allows a communication prohibited by this Section shall, within seven (7) days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each Person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

1.4.8 Appearances

- (a) Participants shall file written appearances within seven (7) days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each

individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

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

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

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

(d) Individuals representing Participants in any hearing also shall enter their appearances at the beginning of the hearing by stating their names, addresses, telephone numbers and email addresses orally on the record.

1.4.9 Failure to Appear or Exercise Diligence

The failure of any Participant to appear during any hearing without good cause and without notification may be grounds for dismissal or deciding against the interests of such Participant.

1.4.10 Consolidation of Proceedings

(a) In the event that more than one Registered Entity receives a Notice of Alleged Violation for the same event or occurrence, and each Registered Entity selects the general hearing procedure described in Sections 1.4 to 1.7, the Hearing Body on its own motion or on motion of a Participant may exercise its discretion to examine the actions of all such Registered Entities in a single proceeding as long as an initial opinion has not been rendered by the Hearing Officer pursuant to Section 1.7.4 in any proceeding to be consolidated.

(b) A Participant may file a motion to consolidate into a single proceeding Alleged Violations of different Reliability Standards against a single Respondent, and related contests of Penalties or Mitigation Plans, arising out of the same event or occurrence. Such consolidation may be allowed in the discretion of the Hearing Officer or Hearing Body, as applicable.

1.5 Prehearing Procedure

1.5.1 [Intentionally left blank]

1.5.2 Prehearing Conference

(a) The Hearing Officer shall hold at least one prehearing conference, which may be the initial prehearing conference or a subsequently scheduled prehearing conference, for the following purposes:

- (1) Preliminarily identify the issues and discuss the anticipated form of the hearing;
- (2) Discuss a schedule for any discovery to be conducted and address any discovery issues that are raised at that time;
- (3) Explore the possibility of obtaining admissions of fact and of the authenticity of Documents that would avoid unnecessary proof;
- (4) Develop a schedule for the preparation and submission of evidence and witness testimony, including the disclosure of witnesses and exhibits and whether the use of pre-filed testimony may not be appropriate, in advance of the Evidentiary Hearing;
- (5) Develop a schedule or schedules for any anticipated motions;
- (6) Schedule a date(s) for the Evidentiary Hearing, which shall be within ninety (90) days of the prehearing conference described in this subsection, unless a different date or dates is specified by the Hearing Officer or the Hearing Body and with the consent of all Participants or for good cause shown; and
- (7) Address such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

(b) The Hearing Officer shall also hold a final prehearing conference prior to the Evidentiary Hearing, for the purpose of discussing:

- (1) the anticipated duration of the hearing;
- (2) the scheduling of witnesses' appearances to testify;
- (3) the issues anticipated to be presented at the hearing;
- (4) whether prehearing memoranda should be filed and if so, the schedule; and
- (5) any other matters identified by the Hearing Officer for the management of the Evidentiary Hearing.

Participants may submit to the Hearing Officer, at least ten (10) days prior to the scheduled date of the final prehearing conference, a proposed list or lists of matters to be discussed at the final prehearing conference.

1.5.3 Summary Disposition

(a) Availability

A Hearing Officer, on the Hearing Officer's own motion or on the motion of a Participant, may issue an initial opinion granting, in whole or in part, summary disposition if it appears that there are no issues of material fact and a Participant is entitled to issuance of a final order in its favor.

(b) Motion for Summary Disposition and Responses

- (1) A Participant moving for summary disposition must clearly identify the material facts that are not in dispute, demonstrate that there are no other material facts in dispute, and demonstrate that on the basis of the undisputed material facts, the Participant is entitled to issuance of a final order in its favor.
- (2) A Participant opposing a motion for summary disposition must clearly identify in its response to the motion the material facts that the Participant contends remain in dispute, and/or explain why the moving Participant is not entitled to issuance of a final order in its favor even though there are no disputed issues of material fact.

(c) Summary Disposition on the Hearing Officer's Own Motion

If the Hearing Officer is considering summary disposition in the absence of a Participant motion, the Hearing Officer shall request the Participants to identify in writing any issues of material fact and to comment on the proposed disposition. Factual information in the Participants' comments shall be supported by affidavit. Following review of the Participants' comments, if it still appears to the Hearing Officer that there are no genuine issues of material fact, the Hearing Officer may proceed without an Evidentiary Hearing. The Hearing Officer shall, however, allow the Participants the opportunity to file briefs.

(d) Hearing Officer's Initial Opinion Granting Summary Disposition

When the Hearing Officer issues an initial opinion granting summary disposition in whole or in part, the ruling shall set forth the rationale for the grant. An initial opinion of the Hearing Officer granting summary disposition shall be confirmed, rejected or modified in a final order issued by the Hearing Body.

1.5.4 Status Hearings

Any Participant may request, and the Hearing Officer may call, a status hearing at any time subsequent to the initial prehearing conference to address issues that have arisen between the Participants or other matters relevant to the conduct of the hearing. Such issues may include, but are not limited to, discovery disputes and scheduling matters. 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. The Hearing Officer shall direct the Clerk to issue a notice of status hearing that sets forth the date, time and place for the hearing, and identifies the matters to be addressed at the hearing.

1.5.5 Motions and Responses

(a) Unless otherwise provided in these Hearing Procedures or by the procedural schedule established by the Hearing Officer or Hearing Body, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless the Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit.

(b) Unless otherwise specified by the Hearing Officer or Hearing Body, responses to motions shall be filed within fourteen (14) days after service of the motion, and replies to responses shall be filed within seven (7) days after service of the responses. A Hearing Officer or Hearing Body may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer or Hearing Body, the filing of a motion does not stay the proceeding or extend any scheduled dates in the proceeding.

1.5.6 Experts

(a) A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign an agreement evidencing the expert's understanding and acknowledgement of the non-public nature of the proceeding and that unauthorized public disclosure of information obtained in connection with the expert's participation in the proceeding is prohibited.

(b) The Participant employing the expert shall propose the agreement for approval by a motion, and its approval shall be subject, in addition to consideration of any objections by other Participants, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.

1.5.7 Inspection and Copying of Documents in Possession of Staff

(a) Documents to be Available for Inspection and Copying

(1) Within twenty-five (25) days after the date the request for hearing is filed, Staff shall make available for inspection and copying by the other Participants, all Documents prepared or obtained by Staff through or in connection with any compliance monitoring processes that led to the institution of proceedings. Such Documents shall include but are not limited to:

- (A) requests for information to the Respondent;
- (B) every written request, including e-mail, directed to persons not employed by the Compliance Enforcement Authority to provide information or Documents or to be interviewed;
- (C) the Documents provided in response to any such requests described in (A) and (B) above;

- (D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;
- (E) all other Documents obtained from the Respondent; and
- (F) all other Documents obtained from persons not employed by the Compliance Enforcement Authority.

The sole grounds on which Staff is authorized to withhold Documents from inspection and copying are the bases set forth in subsection 1.5.7(b); provided, however, that the Documents made available for inspection and copying need not include (i) exact copies of Documents the Respondent previously provided to Staff, and (ii) any Documents provided to the Respondent with or as part of the Notice of Alleged Violation, Notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

- (2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or Hearing Body shall oversee the Staff's designation of Documents to be produced to such other Participants and the development, execution and enforcement of any protective order deemed necessary.
- (3) Staff shall promptly inform the Hearing Officer and each other Participant if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives Documents pursuant to a request for information after Staff has made Documents available for inspection and copying as set forth in subsection (a)(1), the additional Documents shall be made available to the Participants not later than fourteen (14) days after Staff receives such Documents. If a date for the Evidentiary Hearing has been scheduled, Staff shall make the additional Documents available to the other Participants not less than ten (10) days before the Evidentiary Hearing. If Staff receives such Documents ten or fewer days before the Evidentiary Hearing is scheduled to begin or after the Evidentiary Hearing begins, Staff shall make the additional Documents available immediately to the other Participants.
- (4) Nothing in subsection (a)(1) shall limit the discretion of the Compliance Enforcement Authority to make any other Document available to the Participants or the authority of the Hearing Officer to order the production of any other Documents or information by any Participant.

(b) Documents That May Be Withheld by Staff

- (1) Staff may withhold a Document from inspection and copying by a Participant if:
 - (A) the Document is privileged to the Compliance Enforcement Authority or constitutes attorney work product of counsel for the Compliance

Enforcement Authority (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent or other Participant);

- (B) the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that will not be offered in evidence or otherwise relied on by Staff in the hearing;
- (C) the Document would disclose
 - (i) an examination, investigatory or enforcement technique or guideline not otherwise made public of the Compliance Enforcement Authority, a federal, state, or foreign regulatory authority, or a self-regulatory organization;
 - (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization, that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or
 - (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, the Compliance Enforcement Authority, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or
- (D) the Hearing Officer grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

Provided, that where a Document contains information of the type listed in subsections (A), (B), (C) or (D) that is capable of being redacted, Staff shall make the Document available for inspection and copying by the other Participants in redacted form.

- (2) Nothing in subsections (b)(1)(B), (C) or (D) authorizes Staff to withhold a Document, or a part thereof, that contains exculpatory evidence. Nothing in subsection (b)(1) requires Staff to withhold a Document from disclosure.

(c) Withheld Document List

At the time it is required to make Documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which Documents are being made available, a list of Documents withheld by Staff pursuant to

subsection (b)(1), with a statement of the grounds that support withholding the Document. Upon review, for good cause shown, the Hearing Officer may order Staff to make any Document withheld, other than a Document that is subject to the attorney-client privilege, available to the other Participants for inspection and copying.

(d) Timing of Inspection and Copying

Except as set forth in this Section, the Hearing Officer shall determine the schedule of production of Documents for inspection and copying, provided that the Hearing Officer may modify any time period for production set forth in this Section as warranted by the circumstances.

(e) Place and Time of Inspection and Copying

Documents subject to inspection and copying pursuant to this Section shall be made available to the Respondent and other Participants for inspection and copying at the Compliance Enforcement Authority office where the Documents are ordinarily maintained, or at such other office as the Hearing Officer, in his or her discretion, shall designate, or as the Participants otherwise agree. A Participant shall be given access to the Documents at the Compliance Enforcement Authority's offices during normal business hours. A Participant shall not be given custody of the Documents or be permitted to remove the Documents from the Compliance Enforcement Authority's offices, other than copies of Documents made available by the Compliance Enforcement Authority for that purpose.

(f) Copying Costs

A Participant may obtain a photocopy of all Documents made available for inspection. A Participant shall be responsible for the cost of photocopying. Unless otherwise ordered by the Hearing Officer, charges for copies made at the request of a Participant shall be at a rate to be established by the Compliance Enforcement Authority.

(g) Failure to Make Documents Available — Harmless Error

In the event that a Document required to be made available to a Participant pursuant to this Section is not made available by Staff, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to make the Document available was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff to produce a Document, the burden shall be on Staff to show that such failure was harmless error. The Hearing Officer, or, upon review, the Hearing Body shall determine whether the failure to make the Document available was harmless error.

1.5.8 Other Discovery Procedures

(a) In addition to the production of Documents by Staff for inspection and copying by Respondent and other Participants pursuant to Section 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 409 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.409, including data requests, written interrogatories and requests for production of Documents or things, depositions by oral

examination, requests for inspection of Documents and other property, requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce Documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing.

(b) Unless otherwise directed by the Hearing Officer or Hearing Body upon motion by a Participant, or by the Hearing Officer, or by the Hearing Body on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.410 and 385.510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- (1) The provisions of subsections (d), (e) and (f) of Section 1.5.7 shall apply to any such discovery.
- (2) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(d)(2)) shall not be applicable.
- (3) The Hearing Officer and the Hearing Body have the authority to issue orders to compel the appearance by or production of Documents or information by, only a Person that (i) is a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the Hearing Body do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide Documents, information or testimony.
- (4) References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide Documents, information or testimony.
- (5) References to the “Commission” in Rules 402 through 410 and 510(e) shall be to FERC except as follows:
 - (i) the references in Rules 402(a), 404(b)(1) and 405(b), the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the Hearing Body,
 - (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and
 - (iii) the reference in Rule 510(e)(3) shall be deemed to be to the Hearing Officer or Hearing Body.
- (6) Unless otherwise ordered by the Hearing Officer or Hearing Body, a data request, set of interrogatories, request for production of Documents or things, request for inspection of Documents or other property, request for admissions, or order to

produce or provide Documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or date of the order.

- (7) A list of withheld Documents, if any, shall be provided by any Participant required to produce Documents, at the time the Documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the Documents. Upon review, for good cause shown, the Hearing Officer may order the Participant to make any Document withheld available to any other Participant or Participants for inspection and copying.
 - (8) In the event a Document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the Document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a Document or information, the burden shall be on the Participant that failed to produce or provide the Document or information to show that such failure was harmless error. The Hearing Officer or, upon review, the Hearing Body shall determine whether the failure to make the Document available was harmless error.
 - (9) Unless otherwise ordered by the Hearing Officer or Hearing Body, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date the request for hearing was filed.
 - (10) Notwithstanding subsections (b)(6) and (b)(9), however, if the shortened hearing procedure in Section 1.3.4 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.
- (c) The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives:
- (1) full disclosure of all relevant Documents and information;
 - (2) the exercise of due diligence in the conduct of discovery by a Participant; and
 - (3) disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

- (a) Unless the Hearing Officer orders otherwise and with the exception of (i) any adverse Participant examination pursuant to Section 1.6.16 and (ii) the testimony and Documents of a non-Participant provided pursuant to an order to produce or provide Documents, information or testimony, all witness direct testimony to be submitted in an Evidentiary Hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the Evidentiary Hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended.
- (b) Where a Participant intends to use a Document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (other than Documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce Documents), the Participant intending to use such Document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at a Testimonial Hearing.
- (c) Compliance Staff shall file the Documents it intends to offer into evidence as its direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, first. The Registered Entity shall file the Documents it intends to offer into evidence as its direct case, which also may be responsive to Staff's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, second. Staff shall file as its rebuttal case the Documents it intends to offer into evidence in response to the Registered Entity's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, third.
- (d) If appropriate due to the number and/or complexity of the issues, the Hearing Officer may allow for the Registered Entity to submit a rebuttal case that responds to Staff's rebuttal case, in which event the Hearing Officer shall also allow Staff to submit a surrebuttal case that responds to the Registered Entity's rebuttal case.
- (e) Each round of evidence shall be limited in scope to responding to the preceding round of evidence, except that the Registered Entity's direct case may exceed the scope of Staff's direct case if necessary for the Registered Entity to set forth its direct case fully.
- (f) The Participants shall file the Documents they intend to offer into evidence in accordance with the Hearing Officer's schedule, as it may be amended. Such filings of written testimony and other evidence in advance of the Evidentiary Hearing shall not entitle the Documents to be admitted into the evidentiary record. The Participants must offer their witnesses' testimony and other proposed evidence for admission into the evidentiary record during the Evidentiary Hearing.
- (g) Any Participant who fails, without good cause shown, to comply with the Hearing Officer's schedule for the filing of written testimony and other evidence in advance of the Evidentiary Hearing may be limited in the presentation of its evidence during the Evidentiary Hearing or have its participation in the Evidentiary Hearing otherwise restricted by the Hearing Officer to avoid undue prejudice and delay.

1.5.10 Protective Orders

(a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of any non-Participant ordered to produce Documents, information or testimony, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.

(b) The following types of information will be considered entitled to protection through a protective order:

- (i) Confidential Business and Market Information, including information that is proprietary, commercially valuable, or competitively sensitive;
- (ii) Critical Energy Infrastructure Information;
- (iii) information related to a Cyber Security Incident;
- (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information;
- (v) audit work papers;
- (vi) investigative files or Documents that would disclose investigative techniques of Staff, any Compliance Enforcement Authority, the ERO or any federal, state or foreign regulatory authority.

Nothing in this subsection 1.5.10(b) shall require Staff to produce any Documents it is entitled to withhold under subsection 1.5.7(b).

(c) A motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, Documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information while maintaining its proprietary status.

(d) A Document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that Document or statement and a ruling on such a motion by the Hearing Officer.

(e) The protective order shall identify the data, Documents or information that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.

(f) A public redacted version of each Document and transcript that contains information that is protected pursuant to this Section must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.

(g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view or hear the proprietary information in accordance with the protective order.

1.5.11 Pre-Evidentiary Hearing Memorandum

(a) The Hearing Officer or the Hearing Body may request the submission of memoranda prior to the Evidentiary Hearing that set forth each Participant's position on the issue(s) in dispute, the key facts and arguments, the applicable Reliability Standard, rules, orders or other authority, and such other matters as may be directed by the Hearing Officer or the Hearing Body.

(b) The purpose of such memoranda will be to aid the Hearing Officer and Hearing Body in preparation for the Evidentiary Hearing. A Participant will not be deemed to have waived any issue, fact or argument that is not set forth in a pre-Evidentiary Hearing memorandum.

(c) The Hearing Officer may establish word limitations on such submissions.

1.5.12 Certification of Questions to the NERC Board of Trustees

(a) Should a hearing present 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 other extraordinary circumstances that make prompt consideration of the question by the NERC Board of Trustees appropriate, the Hearing Officer, on his or her own motion or on motion of a Participant, may recommend to the Hearing Body that it certify, or the Hearing Body on its own motion may decide to certify, the question to the Board of Trustees for determination pursuant to Section 412 of the Rules of Procedure.

(b) If the Hearing Officer, on his or her own motion, or the Hearing Body, on its own motion, wishes to present a question to the Hearing Body for certification to the NERC Board of Trustees, the Hearing Officer shall first provide the Participants the opportunity to submit memoranda addressing whether the question should be certified and the precise terms of the question to be certified.

(c) If a Participant files a motion requesting, or the Hearing Officer determines on his or her own motion, that a question should be certified to the Board of Trustees, the Hearing Officer shall submit a written recommendation on the matter to the Hearing Body. If the request for certification is based on the motion of a Participant, the Hearing Officer shall also submit to the Hearing Body the motion and any answers to the motion that were filed. If the request for

certification is on the Hearing Officer's own motion, the Hearing Officer shall also submit to the Hearing Body the Participants' memoranda that were filed pursuant to subsection (b).

(d) Questions of fact presented by the particular matter in dispute in a hearing shall not be the subject of a certification to the Board of Trustees.

(e) The Hearing Body shall determine, based on the criteria specified in subsection (a), whether the proposed question shall be certified to the Board of Trustees for determination. To certify the proposed question, 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. If the Hearing Body determines that the proposed question should be certified to the Board of Trustees, the Hearing Body shall also determine whether the hearing should be suspended, in whole or in part, while the question is pending before the Board of Trustees for determination.

(f) As provided in Rule of Procedure Section 412, the Board of Trustees may decide to reject a proposed certification from a Hearing Body.

(f) If the Board of Trustees accepts certification of a question and issues a determination on the question, the hearing shall proceed following the determination in accordance with the Board of Trustees' decision.

1.6 Procedure at Evidentiary Hearing

1.6.1 Purpose of Evidentiary Hearing

The purpose of the Evidentiary Hearing shall be to admit the Participants' evidence into the record, and for each Participant to have the opportunity to cross-examine the other Participant's witnesses. A schedule for briefs, unless waived by the Participants, shall be set at the conclusion of the Evidentiary Hearing.

1.6.2 Order of Receiving Evidence

In all proceedings Compliance Staff shall open and close.

1.6.3 Opening and Closing Statements

Opening and closing statements will not be made during the Evidentiary Hearing as a matter of course except that such statements may be allowed when requested by a Participant, and shall be required when requested by the Hearing Officer or the Hearing Body. Any Participant's request for such statements, or a Hearing Officer or Hearing Body notice requiring such statements, shall be made at least ten (10) days in advance of the start of the Evidentiary Hearing.

1.6.4 Right of Participant to Present Evidence

Subject to compliance with the requirements of these Hearing Procedures concerning the timing of submission of written testimony and other evidence, a Participant has the right to present such

evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

1.6.5 Exhibits

(a) All material offered in evidence, except oral testimony allowed by the Hearing Officer or the testimony of a non-Participant pursuant to an order to produce or provide Documents, information or testimony, shall be offered in the form of an exhibit.

(B) Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the Evidentiary Hearing to the Participants and the Hearing Officer.

1.6.6 Witness Attendance at Testimonial Hearing

(a) Each witness shall attend the Testimonial Hearing in person unless a Participant has been informed in advance of the Testimonial Hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the Hearing Body have any questions for the witness, in which event the witness does need not be present at the Testimonial Hearing.

(b) A person compelled to appear, voluntarily testifying, or making a statement may be accompanied, represented and advised by an attorney.

(c) All testimony offered at a Testimonial Hearing is to be under oath or affirmation. If a witness is not required to attend the Testimonial Hearing, then the Participant on whose behalf the witness prepared testimony shall submit an affidavit of the witness attesting to the veracity of the witness' testimony, and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

1.6.7 Admission of Evidence

(a) Compliance Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise.

(b) Except for witnesses who are not required to attend the Testimonial Hearing, the Participants shall call each witness in turn. Following the witness' swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony or exhibits that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant. The Participant whose witness has made changes or written corrections to written testimony and exhibits shall file corrected copies with the Clerk and provide corrected copies to the Hearing Officer and other Participant.

(c) Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony,

including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Section 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence.

(d) The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Body, in accordance with Section 1.6.14, and then for redirect examination in accordance with Section 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

(e) Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce or provide Documents, information or testimony issued to a non-Participant, no witness shall be allowed to testify unless a Participant has served the witness' written testimony in advance of the Testimonial Hearing in accordance with the schedule established by the Hearing Officer. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the Compliance Enforcement Authority's policy to discourage witness testimony at a Testimonial Hearing when a Participant has not served the witness' written testimony in advance of the Testimonial Hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

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

(a) When relevant and material matter offered in evidence is embraced in a book, paper or Document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable.

(b) If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or Document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit.

(c) All other Participants shall be afforded an opportunity to examine the book, paper or Document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

1.6.9 Stipulations

The Participants may stipulate to any relevant fact or the authenticity of any relevant Document. Stipulations may be made in writing or entered orally in the record. Notwithstanding stipulation, the Hearing Officer may require evidence of the facts stipulated in order to provide a complete evidentiary record on which to base the final order.

1.6.10 Official Notice

- (a) Where relevant and material to the subject matter of the proceeding, the Hearing Officer may, upon request of a Participant, take official notice of any of the following:
- (1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of other Compliance Enforcement Authorities.
 - (2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of the Compliance Enforcement Authority.
 - (3) State, provincial and federal statutes and municipal and local ordinances.
 - (4) The decisions of state, provincial and federal courts.
 - (5) Generally recognized scientific or technical facts within the specialized knowledge of the Compliance Enforcement Authority.
 - (6) All other matters of which the courts of the United States may take judicial notice.
- (b) All requests to take official notice shall be submitted in advance of the Evidentiary Hearing in accordance with a schedule established by the Hearing Officer. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested.
- (c) An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

1.6.11 Admissibility of Evidence

- (a) Any evidence offered, including that included in a book, paper or Document pursuant to Section 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.
- (b) The admission of evidence shall not be limited by the generally recognized rules of evidence as applied in the courts of the United States or of the states, although the Hearing Officer may take such rules of evidence into consideration in ruling on the admissibility of evidence. The Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and shall admit evidence if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.
- (c) Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

1.6.12 Offer of Proof

Any Participant who has had evidence excluded may make an offer of proof on the record. The offer of proof may consist of a statement made on the record of the substance of the evidence that the Participant claims would have been adduced, or any written or documentary exhibit that the Participant sought to introduce. Any such exhibit shall be retained as part of the record.

1.6.13 Reservation of Evidentiary Ruling

(a) The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto.

(b) If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the Evidentiary Hearing to ensure a full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

1.6.14 Cross-Examination

(a) Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. Leading questions are permitted on cross-examination.

(b) The credibility of a witness may be attacked by any Participant, including the Participant calling the witness.

(c) The Hearing Officer and any member of the Hearing Body may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Section 1.6.15.

1.6.15 Redirect Examination

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the Hearing Body. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the Hearing Body.

1.6.16 Examination of Adverse Participant

(a) Any Participant may call any adverse Participant, or any employee or agent thereof, during the Testimonial Hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination.

(b) If a Participant intends to call an adverse Participant for examination, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) days in advance of the Testimonial Hearing, and the Participant who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) days in advance of the Testimonial Hearing.

(c) Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide Documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.

1.6.17 Close of the Evidentiary Record

(a) The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the Evidentiary Hearing.

(b) Evidence may not be added to the evidentiary record after it is closed, provided that, prior to issuance of the Hearing Body's final order, the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant. For the purpose 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.

1.7 Post- Evidentiary Hearing Procedure

1.7.1 Briefs

- (a) At the close of the Evidentiary Hearing, Participants may file initial and reply briefs.
- (b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.
- (c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, the number and complexity of the issues, and the objective of expedition.
- (d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- (e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- (f) The Hearing Officer may allow oral closing statements to be made on the record in lieu of briefs.
- (g) The Hearing Officer may establish reasonable word limitations applicable to briefs.

1.7.2 Other Pleadings

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

1.7.3 Draft Initial Opinions

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

1.7.4 Hearing Officer's Initial Opinion

- (a) At the conclusion of the Evidentiary Hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Body's review and consideration.
- (b) The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Remedial Action Directive that the Hearing Officer proposes the Hearing Body require.
- (c) The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cyber Security Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to Section 1.5.10.

1.7.5 Exceptions

- (a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "brief on exceptions" and, within fourteen (14) days after the time for filing briefs on exceptions or such other time as is set by the Hearing Officer, any Participant may file as a reply, a "brief in reply to exceptions."
- (b) Exceptions and replies thereto with respect to statements, findings of fact or conclusion in the initial opinion must be specific and must be stated and numbered separately in the brief. With regard to each exception, the Participant must specify each error asserted, and include a concise discussion of any policy considerations applicable and any other evidence and arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed (1) together in one brief; or (2) in two separate documents, one designated as the brief containing arguments, and the other designated "Exceptions," containing the suggested replacement language.
- (c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
- (d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.
- (e) Statements of fact should be supported by citation to the record.
- (f) The Hearing Officer may establish reasonable word limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such word limitations shall not apply to a Participant's proposed replacement language.
- (g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion,

the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

1.7.6 Oral Argument

(a) The Hearing Body may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues.

(b) If oral argument is held where briefs have been filed, argument may be limited to issues identified by the Hearing Body. The Hearing Body will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

(c) The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record, and contain accurate citations to the record. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral argument shall be served on all Participants not less than forty-eight (48) hours prior to the time and date of oral argument.

1.7.7 Additional Hearings

After the evidentiary record has been closed but before issuance of the Hearing Body's final order, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the Hearing Body's own motion if there is reason to believe that reopening is warranted by any changes in conditions, or by the need to compile a complete evidentiary record on which to base the final order. Any Participant may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes in conditions or the identification of additional evidence that should be included in the record, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

1.7.8 Hearing Body Final Order

(a) Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Body shall issue its final order.

(b) Issuance of a final order shall require (i) a quorum of the Hearing Body, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Body, and (ii) majority vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum).

(c) The Hearing Body shall strive, but shall not be required, to issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The final order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues presented on the record.

(d) The Hearing Body will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Remedial Action Directive or Mitigation Plan required.

(e) The final order shall note if the subject of the proceeding has been deemed to involve a Cyber security Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Section 1.5.10.

(f) The service of the final order shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.

1.7.9 The Record

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

- (1) Notice of Alleged Violation and Registered Entity's response thereto;
- (2) Registered Entity's proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- (3) Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
- (4) Registered Entity's request for a hearing;
- (5) Participant filings, motions, and responses;
- (6) Notices, rulings, orders and other issuances of the Hearing Officer and Hearing Body;
- (7) Transcripts;
- (8) Evidence received;
- (9) Written comments submitted in lieu of written testimony;
- (10) Matters officially noticed;
- (11) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;

- (12) Pre-Evidentiary Hearing memorandums, briefs, and draft opinions;
- (13) Post-hearing pleadings other than briefs;
- (14) The Hearing Officer's initial opinion;
- (15) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- (16) The Hearing Body's final order and the Clerk's notice transmitting the final order to the Participants;
- (17) All notices of ex parte communications; and
- (18) Any notifications of recusal and motions for disqualification of a member of the Hearing Body or Hearing Officer or Technical Advisor and any responses or replies thereto.

1.7.10 Appeal

A Participant or a Regional Entity acting as the Compliance Enforcement Authority, may appeal a final order of the Hearing Body to NERC in accordance with Rule of Procedure Section 409.

1.8 Settlement

Settlements may be entered into at any time pursuant to Section 5.6 of the NERC Compliance Monitoring and Enforcement Program and the Compliance Enforcement Authority's settlement procedures, provided, that (i) the Compliance Enforcement Authority may decline to engage in or continue settlement negotiations after a Possible Violation or Alleged Violation becomes a Confirmed Violation, and (ii) the Compliance Enforcement Authority, the Registered Entity or any other Participant may terminate settlement negotiations at any time.

1.9 Remedial Action Directives

1.9.1 Initiation of Remedial Action Directive Hearing

(a) Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an Alleged Violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Registered Entity in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program. The Compliance Enforcement Authority will notify NERC within two (2) business days after its Staff issues a Remedial Action Directive.

(b) The Registered Entity may contest the Remedial Action Directive by filing a written notice with the Clerk of the Compliance Enforcement Authority that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the

Registered Entity does not give written notice to the Compliance Enforcement Authority within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

(c) The Clerk shall assign a docket number, and issue a notice of hearing that sets forth the date, time and place at which the hearing will convene.

1.9.2 Remedial Action Directive Hearing Procedure

(a) Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Section 1.9.2. The general hearing procedures described in Sections 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Section.

(b) The Remedial Action Directive hearing shall be presided over by a Hearing Officer and will be conducted according to the following guidelines:

- (1) The Hearing Officer or the Hearing Body will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- (2) A Testimonial Hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- (3) At the Testimonial Hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
- (4) At the Testimonial Hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.
- (5) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the Hearing Body. Oral argument shall not be held.

(c) The Hearing Body shall issue a summary written decision within ten (10) days following submission of the last brief, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that the Hearing Body finds appropriate. 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.

(d) Within thirty (30) days following issuance of its summary written decision, the Hearing Body shall issue a full written decision. The written decision shall state the conclusions of the

Hearing Body with respect to the Remedial Action Directive, and shall explain the reasons for the Hearing Body's conclusions.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

ATTACHMENT 4B

**REVISED APPENDIX 4C OF THE RULES OF PROCEDURE –
*COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM***

REDLINED VERSION



Proposed Revisions 5-04-2012

North American Electric Reliability Corporation

Compliance Monitoring and Enforcement Program

APPENDIX 4C TO THE RULES OF PROCEDURE

Effective: January 31, 2012

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Compliance Monitoring and Enforcement Program

COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Regional Entities to monitor, assess, and enforce compliance with Reliability Standards within the United States. Compliance Monitoring and Enforcement Programs also will be implemented in Canada consistent with Canadian laws and agreements.

1.1 Definitions

Capitalized terms used in this Compliance Program shall have the meanings set forth in Appendix 2 of the NERC Rules of Procedure. For convenience of reference, defined terms frequently used in this Appendix are also set forth below:

- 1.1.1** Alleged Violation: A Possible Violation for which the Compliance Enforcement Authority has determined, based on an assessment of the facts and circumstances surrounding the Possible Violation, that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2** Annual Audit Plan: A plan developed annually by the Compliance Enforcement Authority that includes the Reliability Standards and Registered Entities to be audited, and the schedule of Compliance Audits, ~~and Compliance Audit Participant requirements~~ for the calendar year.
- 1.1.3** Applicable Governmental Authority: The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4** Complaint: An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.5** Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the Requirements of applicable Reliability Standards.
- 1.1.6** Compliance Audit Participants: Registered Entities scheduled to be audited and the audit team members.
- 1.1.7** Compliance Enforcement Authority: NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.

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- 1.1.8** Compliance Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.
- 1.1.9** Confirmed Violation: An Alleged Violation for which (1) ~~at~~ the Registered Entity has: ~~(1)~~ accepted or not contested the Notice of Alleged Violation and Proposed Penalty or Sanction or other notification of the Alleged Violation ~~finding of the violation by a Regional Entity or NERC and will not seek an appeal,~~ 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 ~~completed the hearing and appeals process within NERC,~~ or (3) allowed the ~~period~~time for requesting a hearing or ~~submitting~~ an appeal ~~has~~ expired, or (4) ~~the Registered Entity has executed a settlement agreement pursuant to Section 5.6~~ ~~admitted to the violation in a settlement agreement.~~
- 1.1.10** End Date: The last date of the period to be covered in a Compliance Audit.
- 1.1.11** Exception Reporting: Information provided to the Compliance Enforcement Authority by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a System Operating Limit has been exceeded) or enabling the Compliance Enforcement Authority to ascertain the Registered Entity's compliance.
- 1.1.12** ISO/RTO: An independent transmission system operator or regional transmission organization approved by the FERC or the Public Utility Commission of Texas.
- 1.1.13** Mitigating Activities: 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.
- ~~1.1.12~~**1.1.14** Mitigation Plan: An action plan, ~~required when a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority decision, settlement agreement, or otherwise,~~ that is developed by the Registered Entity to (1) correct a violation of a Reliability Standard and (2) prevent re-occurrence of the violation.
- ~~1.1.13~~**1.1.15** NERC Compliance Registry: A list, maintained by NERC pursuant to Section 500 of the NERC Rules of Procedure and Appendix 5B, the NERC *Statement of Compliance Registry Criteria*, of the owners, operators and users of the Bulk Power System, and the entities registered as their designees, that perform one or more functions in support of reliability of the Bulk Power System and are required to comply with one or more Requirements of Reliability Standards.

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~~1.1.14~~1.1.16 NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan: The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the Compliance Enforcement Authority in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.

~~1.1.15~~1.1.17 Notice of Alleged Violation and Proposed Penalty or Sanction: A notice issued by the Compliance Enforcement Authority to a Registered Entity pursuant to Section 5.3.

~~1.1.16~~1.1.18 Notice of Completion of Enforcement Action: A notice issued by the Compliance Enforcement Authority to a Registered Entity, pursuant to Section 5.10, stating that an enforcement action is closed.

~~1.1.17~~1.1.19 Notice of Confirmed Violation: A notice issued by the Compliance Enforcement Authority to a Registered Entity confirming the violation of one or more Reliability Standards, ~~as a result of (1) the Registered Entity accepting a Notice of Alleged Violation and the proposed Penalty or sanction, or (2) the finding of a violation through a hearing and appeal, or (3) the expiration of the period for requesting a hearing or an appeal, or (4) the Registered Entity admitting the violation as part of an executed settlement agreement.~~

~~1.1.18~~1.1.20 Notice of Penalty: A notice prepared by NERC and filed with FERC, following approval by NERC of a Notice or other notification of Confirmed Violation or a settlement agreement, stating the Penalty or sanction imposed or agreed to for the Confirmed Violation or as part of the settlement.

~~1.1.19~~21 Notice of Possible Violation: A notice issued by the Compliance Enforcement Authority to a Registered Entity that (1) states a Possible Violation has been identified, (2) provides a brief description of the Possible Violation, including the Reliability Standard Requirement(s) and the date(s) involved, and (3) instructs the Registered Entity to retain and preserve all data and records relating to the Possible Violation.

~~1.1.20~~1.22 Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the Compliance Enforcement Authority on a time frame required by a Reliability Standard or an ad hoc basis.

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~~1.1.21~~1.1.23 Possible Violation: The identification, by the Compliance Enforcement Authority, ~~using one of the compliance monitoring and enforcement processes in Section 3.0,~~ of a possible failure by a Registered Entity to comply with a Reliability Standard that is applicable to the Registered Entity.

~~1.1.22~~1.1.24 Preliminary Screen: An initial evaluation of evidence indicating potential noncompliance with a Reliability Standard has occurred or is occurring, conducted by the Compliance Enforcement Authority for the purpose of determining whether a Possible Violation exists, and consisting of an evaluation of whether (1) the entity allegedly involved in the potential noncompliance is registered, ~~and~~ (2) the Reliability Standard Requirement to which the evidence of potential noncompliance relates is applicable to a reliability function for which the entity is registered, ~~and~~ (3) if known, the potential noncompliance is not a duplicate of a Possible Violation or Alleged Violation which is currently being processed.

~~1.1.23~~1.1.25 Regional Implementation Plan: An annual plan, submitted by ~~on or about October~~November 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the Regional Entity, (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the Regional Entity's Annual Audit Plan.

~~1.1.24~~1.1.26 Registered Entity: An owner, operator, or user of the Bulk Power System, or the entity registered as its designee for the purpose of compliance, that is included in the NERC Compliance Registry.

~~1.1.25~~1.1.27 Remedial Action Directive: An action (other than a Penalty or sanction) required by a Compliance Enforcement Authority that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat.

~~1.1.26~~1.1.28 Required Date: The date given a Registered Entity in a notice from the Compliance Enforcement Authority by which some action by the Registered Entity is required.

~~1.1.27~~1.1.29 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~~

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~~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.~~

~~1.1.28~~**1.1.30** Self-Reporting: A report by a Registered Entity stating (1) that the Registered Entity believes it has, or may have, violated a Reliability Standard, ~~and (2) the actions that have been taken or will be taken to resolve the violation.~~

~~1.1.29~~**1.1.31** Spot Checking: A process in which the Compliance Enforcement Authority requests a Registered Entity to provide information (1) to support the Registered Entity's Self-Certification, Self-Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards, or (2) as a random check, or (3) in response to ~~events, as described in the Reliability Standards or based on~~ operating problems or system events.

2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS

NERC shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure and Appendix 5B, *Statement of Compliance Registry Criteria*. Organizations are responsible to register and to comply with Reliability Standards if they are owners, operators, and users of the Bulk Power System, perform a function listed in the functional types identified in Section II of Appendix 5B, and are material to the Reliable Operation of the Bulk Power System as defined by the criteria and notes in Appendix 5B. Regional Entities shall (i) develop and provide to NERC information to assist NERC to register organizations responsible for complying with Reliability Standards, and (ii) in the event of a Registration appeal to NERC or an Applicable Governmental Authority, provide information requested by NERC concerning how the Registered Entity meets the Registration criteria or is otherwise material to the reliability of the Bulk Power System.

NERC shall notify organizations of their inclusion on the NERC Compliance Registry and shall maintain the NERC Compliance Registry on its web site. NERC shall inform each Registered Entity at the time of Registration of the Reliability Standards that are applicable to reliability functions for which the Registered Entity is registered. Each Registered Entity shall inform NERC or the applicable Regional Entity promptly of changes to the Registered Entity's Registration information including planned or completed changes in ownership of Bulk Power System Facilities, Registration status, address and other contact information, and name of designated compliance contact. NERC will provide FERC and Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

NERC and each Regional Entity will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary

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information and communications concerning compliance matters. NERC and the applicable Regional Entity will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

NERC shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. Any such provision of information to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure. ~~However, NERC will not provide non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures. Similarly, during the course of compliance monitoring and enforcement activities relating to non-U.S. entities, NERC may obtain information that it will provide to the Applicable Governmental Authorities, including FERC, that have jurisdiction over the Registered Entity or the portion of the Bulk Power System to which the information pertains, but subject to any limitations placed on the disclosure of non-public, non-U.S. compliance information by the Applicable Governmental Authority with jurisdiction or by other law of the applicable jurisdiction. In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities. The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity's compliance with a Requirement of a Reliability Standard.~~

3.0 COMPLIANCE MONITORING ~~AND ENFORCEMENT~~ PROCESSES

The Compliance Enforcement Authority will monitor, ~~assess, and enforce~~ Registered Entities' compliance with Reliability Standards using the compliance monitoring processes described in this Section ~~3.0 to collect information in order to make assessments of compliance.~~ These processes are described in Sections 3.1 through 3.8 below.

If a compliance monitoring process described in this Section reveals a potential noncompliance with a Reliability Standard, the Compliance Enforcement Authority will conduct a Preliminary Screen of the potential noncompliance in accordance with Section 3.8. In addition, if the Compliance Enforcement Authority obtains evidence or information of a potential noncompliance with a Reliability Standard through any other means, including but not limited to an Exception Report or other report of noncompliance that a Registered Entity is required to submit in accordance with the terms of a Reliability Standard, the Compliance Enforcement Authority will conduct a Preliminary Screen of the information in accordance with Section 3.8. If the Preliminary Screen results in an affirmative determination with respect to the Preliminary

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Screen criteria, a Possible Violation exists and the Compliance Enforcement Authority will proceed in accordance with Section 5.0, Enforcement Actions.

~~Enforcement actions taken by the Compliance Enforcement Authority through the Compliance Program may include the imposition of remedial actions, sanctions, and Penalties, where applicable, which shall be based on the schedule of Penalties and sanctions approved for implementation by FERC and other Applicable Governmental Authorities. The imposition and acceptance of sanctions and Penalties shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards. Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.~~

The ~~Compliance monitoring processes in this Section Program~~ requires timely information, reports and data from Registered Entities to effectively monitor compliance with Reliability Standards. The Compliance Enforcement Authority has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting copies of Documents, data and information to be made and removing those copies from the Registered Entity's location in accordance with appropriate security procedures conforming to Section 1500 of the Rules of Procedure 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 of the information were placed into the public domain. If Documents, data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data.**

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a ~~party~~Registered Entity believes that a request for Documents, data or information is unreasonable, the ~~party~~Registered Entity may request a written determination from the NERC ~~general counsel~~compliance program officer.

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

3.1 Compliance Audits

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. Compliance Audit processes for Compliance Audits conducted in the United States shall be based on professional auditing standards recognized in the U.S., which may include~~ing~~ for example Generally Accepted Auditing Standards, Generally Accepted Government Auditing

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Standards and standards sanctioned by the Institute of Internal Auditors. Compliance Audit processes for Compliance Audits conducted outside the U.S. may be based on Canadian or other international standards. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the Compliance Audit, consistent with accepted auditing guidelines as approved by NERC. The audit guides will be posted on NERC's website.

3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows:⁺

- The Compliance Enforcement Authority ~~posts~~distributes the Annual Audit Plan (developed in coordination with NERC) ~~to the Compliance Audit Participants and NERC.~~ The Compliance Enforcement Authority provides additional information to the Compliance Audit Participants, including Compliance Audit materials, coordinating agendas and changes to the Compliance Audit schedule as required. ~~Prior to the Compliance Audit, the Compliance Enforcement Authority informs the Registered Entity of the Reliability Standards to be evaluated.~~ NERC or the Regional Entity provides the Compliance Audit schedules to FERC and to any other Applicable Governmental Authority based upon the agreements in place with the other Applicable Governmental Authority.
- At least ~~two (2) months~~ninety (90) days prior to commencement of a regularly scheduled Compliance Audit, the Compliance Enforcement Authority notifies the Registered Entity of the Compliance Audit and the Reliability Standards to be evaluated, identifies the Compliance Audit team members and their recent employment history, and requests data, including a completed NERC pre-Compliance Audit questionnaire. If the Compliance Audit team members change from the time of the original notification, the Compliance Enforcement Authority will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the new Compliance Audit team member(s) (see Section 3.1.5.4).
- The Registered Entity provides to the Compliance Enforcement Authority the required information in the format and by the Required Date specified in the request.
- The Compliance Audit team reviews the submitted information for conformance with the Requirements of the Reliability Standards ~~prior to performing the Compliance Audit. The Compliance Audit team follows NERC Compliance Audit guidelines in the implementation of the Compliance Audit.~~
- ~~This~~The Compliance Audit team shall include ~~conducting~~conducting an exit briefing with the Registered Entity, ~~providing~~providing for a review of the Compliance Audit report with the Registered Entity before it is finalized, and ~~completing~~issuing a Compliance Audit report

⁺~~This process normally completes within sixty (60) days of the completion of the on-site Compliance Audit work at the Registered Entity's site.~~

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~~in accordance with Section 3.1.6, including an assessment of compliance with the Reliability Standards, to the Compliance Enforcement Authority.~~

- ~~If the Compliance Audit Team identifies evidence of a potential noncompliance with a Reliability Standard Requirement by the Registered Entity, the Compliance Enforcement Authority conducts a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.~~

~~□The Compliance Enforcement Authority reviews the report developed by the Compliance Audit team and completes a Preliminary Screen for any Possible Violations of Reliability Standards, based on the potential noncompliances with Reliability Standards (if any) identified in the report.~~

- ~~If the Compliance Enforcement Authority concludes that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.~~

~~□The Compliance Enforcement Authority provides the final Compliance Audit report to the Registered Entity and to NERC.~~

3.1.2 Compliance Enforcement Authority Annual Audit Plan and Schedule

The Compliance Enforcement Authority shall develop an Annual Audit Plan. The Annual Audit Plan of Regional Entities will be included in the Regional Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or the Regional Entity provides the Annual Audit Plans to FERC and to any other Applicable Governmental Authority consistent with the agreements in place with the Applicable Governmental Authority.

Prior to ~~January~~October 1 of the year preceding the year covered by the Annual Audit Plan, the Compliance Enforcement Authority shall notify Registered Entities subject to Compliance Audits during the upcoming year; of the Compliance Audit schedules, ~~methods, and data requirements for the Compliance Audit~~. The Compliance Enforcement Authority will give due consideration to any schedule changes requested by Registered Entities for reasonable cause~~to avoid unnecessary burdens~~.

Revisions and additions to a Regional Entity Annual Audit Plan shall be communicated to and approved by NERC, and shall be communicated to the Registered Entity ~~shall be notified~~ in a timely manner (normally sixty (60) days in advance) of changes or revisions to scheduled Compliance Audit dates.

3.1.3 Frequency of Compliance Audits

The Compliance Enforcement Authority will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure and based on criteria established by NERC. In addition to scheduled Compliance Audits, the Compliance Enforcement Authority ~~Additionally, (i) may initiate~~ an unscheduled Compliance Audit of any Registered Entity ~~(i) may be initiated~~ at any time ~~by the Compliance Enforcement Authority~~ if the Compliance Enforcement Authority reasonably determines it to be necessary to ensure the Registered Entity's compliance with

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Reliability Standards, and (ii) shall ~~be initiated by the~~ an unscheduled Compliance Audit Enforcement Authority or by NERC if directed by FERC. The Compliance Enforcement Authority shall notify NERC and FERC ~~Prior to or on the same date it notifies the Registered Entity that an unscheduled Compliance Audit is being initiated,~~ the Compliance Enforcement Authority shall notify NERC and FERC that an unscheduled Compliance Audit is being initiated. If NERC initiates the unscheduled Compliance Audit, it shall notify the appropriate Regional Entity or Entities. The Registered Entity Compliance Enforcement Authority shall provide~~receive~~ at least ten (10) business days advance notice to the Registered Entity that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team. ~~The Registered Entity shall make any objections to the composition of the Compliance Audit team, which shall be based on failure to meet the criteria specified in Section 3.1.5.2, at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit.~~

3.1.4 Scope of Compliance Audits

3.1.4.1 Reliability Standards

A Compliance Audit shall include those Reliability Standards applicable to the Registered Entity that are identified in the NERC Implementation Plan for the current year, and may include other Reliability Standards applicable to the Registered Entity whether or not they that are identified in the Regional Entity's Regional Implementation Plan for the current year. ~~The Compliance Audit may include any other Reliability Standards that are applicable to the Registered Entity.~~

3.1.4.2 Period Covered

The Registered Entity's data and information ~~should~~must show compliance with the Reliability Standards that are the subject of the Compliance Audit for the entire period covered by the Compliance Audit. The Compliance Enforcement Authority will indicate the beginning and End Date of the audit period in its notice of the Compliance Audit. The audit period begins~~with~~ with the day after the End Date of the prior Compliance Audit by the Compliance Enforcement Authority ~~ended~~ (or the later of June 18, 2007 or the date the Registered Entity's date of registration became subject to Reliability Standards if the Registered Entity has not previously been subject to a Compliance Audit), ~~and ending with the End Date for the Compliance Audit. However, if another compliance monitoring and enforcement process has been conducted with respect to the Registered Entity subsequent to the date that would otherwise be the start of the period, the period covered by the Compliance Audit may, in the Regional Entity's discretion, begin with the completion of that compliance monitoring and enforcement process for those Reliability Standards requirements that were the subject of the compliance monitoring and enforcement process. The audit period will not begin prior to the End Date of the previous Compliance Audit. 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. The End Date should be a specified date prior to the scheduled start of the Compliance Audit, such as the date of the notification will be stated in the Compliance Enforcement Authority's notification of the Compliance Audit issued to the Registered Entity pursuant to Section 3.1.1 or the date that is thirty (30) days following the date of the notification.~~

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The Registered Entity will be expected to demonstrate compliance for the entire period described above. ~~However, if~~ a Reliability Standard specifies a document retention period that does not cover the entire period described above, the Registered Entity will not be found in noncompliance solely on the basis of the lack of specific information that has rightfully not been retained based on the retention period specified in the Reliability Standard. However, in such cases, the Compliance Enforcement Authority will require the Registered Entity to demonstrate compliance through other means. In addition, 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 Section 3.8.

3.1.4.3 Review of Mitigating Plans Activities

The Compliance Audit ~~will~~may include a review of any Mitigating Activities~~Mitigation Plans~~ which the Registered Entity has not yet completed, for the purpose of determining whether the Registered Entity is making adequate progress towards completion of the Mitigating Activities~~Mitigation Plan~~.

3.1.5 Conduct of Compliance Audits

3.1.5.1 Composition of Compliance Audit Teams

The Compliance Audit team shall be comprised of ~~staff from~~members whom the Compliance Enforcement Authority has determined have the requisite knowledge, training and skills to conduct the Compliance Audit and such other persons as are included in ~~the Compliance Audit team pursuant to Section 3.1.5.3, and~~ may include (i) contractors and industry subject matter experts, ~~as determined by the Compliance Enforcement Authority to be appropriate to comprise a sufficient Compliance Audit team.~~ (ii) NERC staff members (which may include contractors to NERC), (iii) compliance staff members of other Regional Entities, and (iv) representatives of FERC and other Applicable Governmental Authorities so long as the Registered Entity is subject to the Applicable Governmental Authority's reliability jurisdiction. The Compliance Audit team leader shall be a staff member from the Compliance Enforcement Authority and is responsible for the conduct of the Compliance Audit and preparation of the Compliance Audit report.

3.1.5.2 Requirements for Compliance Audit Team Members

Each Compliance Audit team member must:

- Be free of conflicts of interests in accordance with the Compliance Enforcement Authority policies. ~~For example, e~~Employees or contractors of the Registered Entity being audited shall not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the Compliance Enforcement Authority is applicable.
- Successfully complete all NERC or NERC-approved Regional Entity auditor training applicable to the Compliance Audit.

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- ~~Provide copies of~~ Prior to the Compliance Audit, the Compliance Enforcement Authority shall provide confirmation to the Registered Entity that all Compliance Audit team members have executed confidentiality agreements or acknowledgements ~~to be provided to the Registered Entity prior to the Compliance Audit.~~

3.1.5.3 Compliance Audit Observers ~~and~~ Other Attendees

Participants

In any Regional Entity Compliance Audit of a Registered Entity, in addition to the Compliance Audit team members, the following may participate as observers: (i) NERC Staff (which may include contractors to NERC) ~~may participate either as observers or as Compliance Audit team members;~~ (ii) other members of the Regional Entity's Compliance Staff, ~~in addition to the Compliance Audit team, may participate as observers;~~ (iii) with the permission of the Regional Entity, Compliance Staff members of other Regional Entities ~~may participate either as observers or as Compliance Audit team members;~~ and (iv) representatives of FERC and of other Applicable Governmental Authorities ~~may participate either as observers or as Compliance Audit team members~~ so long as the Registered Entity is subject to the Applicable Governmental Authority's reliability jurisdiction. 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 Section 3.1.1 are observers.

In addition, at the request of the Registered Entity being audited, the Regional Entity may allow attendance at the Compliance Audit by: (1) representatives of corporate affiliates of the Registered Entity being audited that are Registered Entities or that provide compliance services, support or oversight to the Registered Entity being audited, and (2) representatives of Registered Entities whose compliance activities are conducted by the Registered Entity being audited or by the same corporate entity that conducts the compliance activities of the Registered Entity being audited (e.g., representatives of other members of a Joint Registration Organization or of participants in a Coordinated Functional Registration pursuant to Section 500 of the Rules of Procedure). Each such additional attendee must execute a confidentiality agreement approved by the Regional Entity.

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.

The Compliance Audit team leader or other staff of the Regional Entity conducting the Compliance Audit will communicate in advance with any observers or other attendees to ensure there are no undue disruptions to the Compliance Audit, such as space limitations, no conflicts of interest, and no other considerations that in the judgment of the Compliance Audit team leader may be detrimental to the conduct and quality of the Compliance Audit. If the Compliance Audit team leader identifies any such issues, he/she shall work with the proposed observers or attendees to facilitate observation in a less disruptive manner; or, alternatively, the Regional Entity Compliance staff will work with the proposed observers or attendees to schedule their participation in, observation of, or attendance at a different Compliance Audit in which such issues are not presented.

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3.1.5.4 Registered Entity Objections to Compliance Audit Team

A Registered Entity subject to a Compliance Audit may object to any member of the Compliance Audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Any such objections must be provided in writing to the Compliance Enforcement Authority no later than fifteen (15) days prior to the start of on-site Compliance Audit work. This fifteen (15) day requirement shall not apply ~~(i)~~ where a Compliance Audit team member has been appointed less than twenty (20) days prior to the start of on-site Compliance Audit work, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority within five (5) business days after receiving notice of the appointment of the Compliance Audit team member; ~~and (ii)~~

~~i~~In the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, ~~in which case~~ the Registered Entity must provide any objections to the Compliance Enforcement Authority at least five (5) business days prior to the start of on-site Compliance Audit work for the unscheduled Compliance Audit.

The Compliance Enforcement Authority will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in Section 3.1 shall be read to limit the participation generally of NERC staff in the Compliance Audit or to limit the participation generally 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 (as opposed to participation by individual NERC Staff or FERC staff members to whom the Registered Entity states a valid objection in accordance with Section 3.1.5.4).

3.1.6 Compliance Audit Reports

The Compliance Audit team shall develop a draft Compliance Audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any evidence of possible potential noncompliance with Reliability Standards by the Registered Entity found by the Compliance Audit team; identify any ~~Mitigation Plans or Remedial Action Directives~~, Mitigation Plans or other Mitigating Activities which have been completed or pending in the year of the Compliance Audit; and identify ~~if the nature of~~ any Confidential Information has been redacted. The report may also state areas of concern and recommendations identified by the Compliance Audit team. A separate document may be prepared that contains recommendations of the Compliance Audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

The Compliance Audit team ~~will~~ considers corrections based on comments of the Registered Entity, ~~and provide the finalizes the~~ Compliance Audit report, ~~to the Compliance Enforcement Authority who will review the report and assess compliance with the Reliability Standards~~ and provides the Registered Entity with a copy of the final report on or before the date the final report is provided to NERC. ~~Regional Entities~~ The Compliance Enforcement Authority will provides the final report to NERC, which ~~will~~ in turn provides the report to FERC -if the report pertains to a Registered Entity or to a portion of the Bulk Power System over which FERC has

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jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the Bulk Power System over which the other Applicable Governmental Authority has jurisdiction. The provision of the final Compliance Audit report to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC may place on such disclosure; and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission for such disclosure from the Applicable Governmental Authority with jurisdiction over the Registered Entity or the portion of the Bulk Power System to which such non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. The Registered Entity shall receive the final Compliance Audit report at least five (5) business days prior to the release of the report to the public. Work papers and other documentation associated with the Compliance Audit shall be maintained by the Compliance Enforcement Authority in accordance with NERC or Regional Entity requirements.

NERC will not publicly post the final Compliance Audit report for at least five (5) business days following receipt. In the event If the Compliance Audit report identifies any Possible Violations of one or more Reliability Standards, the final Compliance Audit report, or pertinent part thereof identifying the Possible Violations, shall not be released to the public by NERC ~~or the Compliance Enforcement Authority~~ until (i) the Possible Violation is dismissed prior to becoming a Confirmed Violation, or (ii) NERC submits a Notice of Penalty to FERC or other Applicable Governmental Authority, or (iii) the Registered Entity executes/admits to a violation or enters into a settlement agreement with the Compliance Enforcement Authority pursuant to Section 5.6.

Information deemed by a Compliance Enforcement Authority or the Registered Entity as Critical Energy Infrastructure Information or Confidential Information shall be redacted from any public reports.

3.2 Self-Certifications

The Compliance Enforcement Authority may require Registered Entities to self-certify their compliance with Reliability Standards.

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

3.2.1 Self-Certification Process Steps

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The process steps for the Self-Certification process are as follows:²

- The Compliance Enforcement Authority posts and updates the reporting schedule containing the applicable reporting periods and informs Registered Entities. The Compliance Enforcement Authority and NERC will ensure that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available ~~electronically~~.
- The Compliance Enforcement Authority requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the form and manner, and by the Required Date, specified by the Compliance Enforcement Authority. The Self-Certification response may state that (i) the Registered Entity is in compliance with the Reliability Standard Requirement, (ii) the Registered Entity is not in compliance with the Reliability Standard Requirement, (iii) the Registered Entity does not own Facilities that are subject to the Reliability Standard Requirement, or (iv) the Reliability Standard requirement is not applicable to the Registered Entity.
- At a minimum, the Compliance Enforcement Authority reviews Self-Certifications of non-compliance and Self-Certifications in which the Registered Entity has responded 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 information to determine compliance with the Reliability Standards and the Compliance Enforcement Authority may request additional data and/or information if necessary.
- ~~The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard (and with the Registered Entity's Mitigation Plan, if applicable). If the Compliance Enforcement Authority concludes, after completing a Preliminary Screen(s), that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation. If the Compliance Enforcement Authority's review of the Self-Certification indicates a potential noncompliance with a Reliability Standard by the Registered Entity, the Compliance Enforcement Authority conducts a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.~~

Receipt of a Self-Certification by the Compliance Enforcement Authority shall not be construed as a finding by the Compliance Enforcement Authority that the Registered Entity is compliant with, not compliant with, subject to, or not subject to, the Reliability Standard Requirement.

²~~If no Possible Violations are found, this process normally completes within sixty (60) days of the Compliance Enforcement Authority's receipt of data.~~

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3.3 Spot Check~~ing~~^{ing}

Spot Check~~ing~~^{ing} will be conducted by the Compliance Enforcement Authority. Spot Check~~ing~~^{ing} may be initiated ~~at the discretion of~~^{by} the Compliance Enforcement Authority ~~or as directed by~~^{NERC} at any time to verify or confirm Self-Certifications, Self-Report~~ing~~^{ing}, and Periodic Data Submittals. Spot Check~~ing~~^{ing} may also be random or may be initiated in response to events, as described in the Reliability Standards, or to operating problems, or system events. ~~The Compliance Enforcement Authority then reviews the information submitted to verify the Registered Entity's compliance with the Reliability Standard. Compliance auditors may be assigned to the Spot Checking process by the Compliance Enforcement Authority as necessary.~~

3.3.1 Spot Check~~ing~~^{ing} Process Steps

The process steps for Spot Checking are as follows:³

- The Compliance Enforcement Authority ~~shall issue a notification letter to~~^{notifies} the Registered Entity that ~~a~~^a Spot Check~~ing~~^{ing} will be performed, ~~and~~^{and} the reason for the Spot Check~~ing~~^{ing}, ~~and the scope of the Spot Check including the Reliability Standard Requirements that will be covered, in accordance with~~^{the} the advance notice period specified by the Reliability Standard. If the Reliability Standard ~~Requirement~~^{Requirement} does not specify an advance notice period, any information submittal request made by the Compliance Enforcement Authority will allow at least twenty (20) days for the Registered Entity to submit the information or make it available for review.
- The Compliance Enforcement Authority, ~~as part of the notification package during the advance notice period, notifies~~^{shall provide} the Registered Entity ~~with~~^{of} the names and employment histories of the persons who will be conducting the Spot Check~~ing~~^{ing}. ~~The Compliance Enforcement Authority shall provide confirmation to the Registered Entity that the members of the Spot Check team have executed confidentiality agreements or acknowledgements.~~ The Registered Entity may object to inclusion of any individual on the Spot Check~~ing~~^{ing} team ~~on the grounds specified in accordance with~~ⁱⁿ Section 3.1.5.4. Any such objections must be submitted ~~to the Compliance Enforcement Authority~~^{to the Compliance Enforcement Authority} by the later of (i) five (5) business days before the information being requested by the Compliance Enforcement Authority is submitted and (ii) five (5) business days after the Registered Entity is notified of the persons on the Spot Check~~ing~~^{ing} team. Nothing in ~~Section 3.1~~^{this step} shall be read to limit the participation ~~generally~~^{generally} of NERC ~~or FERC~~^{staff} ~~on the in a Spot Checking team or to limit the participation generally of FERC staff in a Spot Check of a Registered Entity, or involving a portion of the Bulk Power System, over which FERC has jurisdiction (as opposed to individual NERC Staff or FERC staff members to whom the Registered Entity has stated a valid objection).~~
- The Spot Check~~ing~~^{ing} may require submission of data, documentation, ~~and information~~^{and information} ~~and/or possibly~~^{and/or possibly} an on-site review.

³~~If no Possible Violations are found, this process normally completes within ninety (90) days of the Compliance Enforcement Authority's receipt of data.~~

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- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format and by the Required Date specified in the request.
- The ~~Compliance Enforcement Authority~~Spot Check Team ~~conducts a~~ reviews of the information submitted to determine compliance with the Reliability Standards Requirements and may request additional data and/or information if necessary ~~for a complete assessment of compliance~~.
- If the Spot Check team's review of the information submitted indicates a potential noncompliance with a Reliability Standard Requirement by the Registered Entity, the Compliance Enforcement Authority conducts a Preliminary Screen pursuant to Section 3.8.
- The ~~Spot Check team~~ prepares a draft Spot Check report~~Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Registered Entity~~ and provides the Registered Entity ten (10) business days~~an opportunity for the Registered Entity~~ to comment on the draft report~~assessment~~.
- The ~~Compliance Enforcement Authority~~Spot Check team ~~considers any corrections based on the Registered Entity's comments, finalizes completes and documents the assessment of the Registered Entity for compliance with the Reliability Standard and provides at the Spot Check report and provides it to the Registered Entity and to NERC indicating the results of the Spot Checking.~~
- If the Compliance Enforcement Authority is a Regional Entity, the Regional Entity provides the final report to NERC. NERC provides the report to FERC if the report pertains to a Registered Entity or to a portion of the Bulk Power System over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the Bulk Power System over which the other Applicable Governmental Authority has jurisdiction. The provision of the report to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure.~~Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC may place on such disclosure; and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission for such disclosure from the Applicable Governmental Authority with jurisdiction over the Registered Entity or the portion of the Bulk Power System to which such non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.~~
- The report will not be publicly posted, or otherwise made publicly available, by the Regional Entity or by NERC.

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- ~~• If the Compliance Enforcement Authority concludes, after completing a Preliminary Screen(s), that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.~~

3.4 Compliance Investigations

A Compliance Investigation may be initiated at any time by the Compliance Enforcement Authority or NERC in response to a system disturbance, Complaint, or any potential noncompliance with~~Possible Violation of~~ a Reliability Standard identified by any other means.

Compliance Investigations will generally be led by the Regional Entity's staff. NERC reserves the right to assume the leadership of a Compliance Investigation.⁴ The Regional Entity shall not be entitled to appeal NERC's decision to lead a Compliance Investigation.

Compliance Investigations are confidential, unless FERC directs that a Compliance Investigation should be public or that certain information obtained in the Compliance Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Investigation will be made public.

FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or potential noncompliance with~~Possible Violation of~~ a Reliability Standard identified by any other means, or for any other purpose authorized by law. Investigations initiated by FERC or another Applicable Governmental Authority shall be governed by and conducted pursuant to the statutory authority and rules of the Applicable Governmental Authority and not the procedures set forth herein. If an Applicable Governmental Authority other than FERC initiates an investigation of a U.S.-related matter, NERC shall provide notice to FERC of the investigation prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC shall identify the other Applicable Governmental Authority, shall describe the nature of the proposed disclosures to the other Applicable Governmental Authority, and shall state the procedures NERC will utilize in connection with the Compliance Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations.

If FERC initiates an investigation of a non-U.S.-related matter, NERC shall provide notice of the investigation to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the Bulk Power System that is the subject of the investigation prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC

⁴Examples of situations in which NERC may decide to lead a Compliance Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate Compliance Investigations into matters that may cross Regional Entity boundaries, (iii) where the potential noncompliance is related to the Regional Entity or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the Regional Entity determines it cannot conduct the Compliance Investigation.

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will utilize in connection with the investigation to ensure compliance with regulations of the other Applicable Governmental Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

3.4.1 Compliance Investigation Process Steps

The process steps for a Compliance Investigation are as follows:⁵

- The Compliance Enforcement Authority ~~is notified or~~ becomes aware of circumstances indicating a Reliability Standard may have been or is being violated and determines whether a Compliance Investigation is warranted. Within ~~three (3)~~~~two (2)~~ business days of the decision to initiate a Compliance Investigation, the Compliance Enforcement Authority: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Investigation, ~~(ii) instructs the Registered Entity~~~~the requirements~~ to preserve all records and information relevant to the Compliance Investigation ~~and, where appropriate, the reasons for the Compliance Investigation,~~ and (iii) ~~notifies~~~~provides a copy of the notice to~~ NERC ~~of the initiation of and the reasons for the Compliance Investigation.~~ While the Compliance Enforcement Authority may, at its discretion, notify ~~the Registered Entity of the reasons for its~~The Compliance Investigation, ~~may be expanded beyond the initial scope based on information obtained by the Compliance Enforcement Authority after initiation of~~ the Compliance Investigation, ~~as it unfolds, need not be limited to this scope.~~
- NERC assigns a NERC staff member to the Compliance Investigation ~~as an observer or team member~~ and to serve as a single point of contact for communications with NERC, ~~and notifies the Registered Entity as to whether the NERC staff member is acting as an observer or as a team member.~~ Within ~~three (3)~~~~two (2)~~ business days after NERC ~~receives notice~~~~is notified~~ of the decision to initiate a Compliance Investigation, NERC will notify ~~FERC and~~ each ~~other~~ Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the Bulk Power System to which the Compliance Investigation relates. ~~Any such notice to FERC or to another Applicable Governmental Authority will be provided in accordance with Section 8.0, Reporting and Disclosure. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the Bulk Power System to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.~~
- ~~The Compliance Enforcement Authority requests data or documentation and provides a list of individuals on the Compliance Investigation team and their recent employment~~

⁵~~If no Possible Violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Investigation.~~

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~~history. The Registered Entity may object to any individual on the Compliance Investigation team in accordance with Section 3.1.5.4; however, the Registered Entity may not object to participation by NERC, by FERC staff or by staff of another Applicable Governmental Authority on the Compliance Investigation team. If the Reliability Standard does not specify the advance notice period, a request is normally issued with no less than twenty (20) days advance notice.~~

- ~~Within ten (10) business days of receiving the notification of a Compliance Investigation, a Registered Entity subject to a Compliance Investigation may object to any individual member of the Compliance Investigation team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties; however, the Registered Entity may not object to participation generally by NERC, by FERC staff or by staff of another Applicable Governmental Authority having reliability jurisdiction over the Registered Entity in the Compliance Investigation (as opposed to objecting to inclusion of specific persons on the Compliance Investigation team).~~ Such objections must be provided in writing to the Compliance Enforcement Authority within such ten (10) business day period. The Compliance Enforcement Authority will make a final determination as to whether the individual will participate in the Compliance Investigation of the Registered Entity.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format and by the Required Date as specified in the request. If information is not received in the time and format requested, the Compliance Enforcement Authority may initiate the steps in Process for Non-Submittal of Requested Data in Attachment 1.
- If necessary, the Compliance Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- ~~In conducting the Compliance Investigation,~~ ~~t~~The Compliance Enforcement Authority may require the Registered Entity to (i) provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the Compliance Enforcement Authority's requests for information; and (ii) produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the matter(s) that are the subject of the Compliance Investigation, to be interviewed or to provide testimony under oath concerning such matters. The Compliance Enforcement Authority shall determine in each case (i) whether representatives of the Registered Entity shall be allowed to be present when an interview is taking place or testimony is being taken, and (ii) whether, and by what method, the interview or testimony shall be recorded; provided, that counsel for the person being interviewed or giving testimony may be present when the interview is being conducted or testimony is being taken (regardless of whether such counsel also represents the Registered Entity).
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards. The Compliance Enforcement Authority may request

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additional data and/or information, if necessary ~~for a complete assessment or to demonstrate compliance.~~

- The Compliance Enforcement Authority completes the assessment of compliance with the Reliability Standard, ~~and/or approval of the applicable~~ which may include review of a Mitigation Plan or Mitigating Activities, writes and distributes the ~~provides a report of the Compliance Investigation to NERC,~~ and ~~notifies~~ the Registered Entity.
- If the Compliance Enforcement Authority ~~concludes~~, at any time during the Compliance Investigation, identifies a potential noncompliance with a Reliability Standard Requirement by a Registered Entity, the Compliance Enforcement Authority shall conduct a Preliminary Screen of the potential noncompliance in accordance with Section 3.8 and after completing a Preliminary Screen(s), that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.
- If the Compliance Enforcement Authority determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the Compliance Investigation has been completed. NERC will in turn notify FERC and, if the Compliance Investigation pertained to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, will also notify such other Applicable Governmental Authority. Any such notice to FERC or to another Applicable Governmental Authority shall be provided in accordance with Section 8.0, Reporting and Disclosure. Provided, however, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the Bulk Power System to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

3.5 Self-Reporting

Self-Reporting ~~is are~~ encouraged at the time a Registered Entity becomes aware (i) that it has, or may have, of a ~~violated~~ violation of a Reliability Standard, or (ii) ~~a change in~~ the Violation Severity Level of a previously reported violation has changed. Self-Reporting of a violation of a Reliability Standard ~~are is~~ encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program ~~and/or whether~~ the violation is determined outside the pre-defined reporting schedule. 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.

3.5.1 Self-Reporting Process Steps

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The process steps for Self-Reporting are as follows:⁶

- The Compliance Enforcement Authority posts the Self-Reporting submittal forms and ensures they are maintained and available ~~on its website~~.
- The Registered Entity provides the Self-Reporting information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews the information to ~~evaluate~~ determine compliance with the Reliability Standards and may request ~~that~~ the Registered Entity ~~to~~ provide clarification or additional data and/or information.

~~□ The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standards and any Mitigation Plan, if applicable, and notifies the Registered Entity.~~

- ~~If~~ ~~the~~ Compliance Enforcement Authority ~~concludes, after~~ conducting a Preliminary Screen(s), of the Self-Report information in accordance with Section 3.8 ~~that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.~~

3.6 Periodic Data Submittals

The Compliance Enforcement Authority requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, ~~or as~~ established by the Compliance Enforcement Authority, or on an as-needed basis. ~~Requests for data submittals will be issued by~~ ~~the~~ Compliance Enforcement Authority ~~shall issue requests for Periodic Data Submittals~~ to Registered Entities with ~~in~~ at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the ~~Compliance Enforcement Authority will normally issue this~~ request ~~will normally be issued~~ with no less than twenty (20) days advance notice.

3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows:⁷

- The Compliance Enforcement Authority posts the current data reporting schedule on its website and ~~informs~~ keeps Registered Entities ~~informed~~ of changes and/or updates. The Compliance Enforcement Authority ensures that the ~~appropriate Reliability Standard compliance procedures and the~~ required submittal forms for the Reliability Standards being evaluated are maintained and available ~~via its website~~.
- The Compliance Enforcement Authority makes a request for a Periodic Data Submittal.

~~⁶This process normally completes within sixty (60) days following the Compliance Enforcement Authority's receipt of data.~~

~~⁷If no Possible Violation(s) are found, this process generally completes within ten (10) business days of the Compliance Enforcement Authority's receipt of data.~~

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- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format and by the Required Date as specified in the request.
- The Compliance Enforcement Authority reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information if necessary for a complete assessment or to demonstrate compliance.
- If the Compliance Enforcement Authority's review of the data submittal indicates a potential noncompliance with a Reliability Standard Requirement by the Registered Entity, the Compliance Enforcement Authority performs a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.

~~□ If the Compliance Enforcement Authority's assessment of the Registered Entity's compliance indicates there may be a Possible Violation, the Compliance Enforcement Authority provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.~~

~~□ If the Compliance Enforcement Authority concludes, after conducting a Preliminary Screen(s), that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.~~

Receipt of a Periodic Data Submittal by the Compliance Enforcement Authority shall not be construed as a finding by the Compliance Enforcement Authority that the Registered Entity is compliant with, not compliant with, subject to, or not subject to, the Reliability Standard Requirement.

3.7 Exception Reporting

~~Some Reliability Standards require reporting of exceptions to compliance with the Reliability Standard as a form of compliance monitoring. The Compliance Enforcement Authority shall require Registered Entities to provide reports identifying any exceptions to the extent required by any Reliability Standard.~~

~~The Compliance Enforcement Authority shall also require Registered Entities to confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.~~

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3.8.7 Complaints

Either NERC or Regional Entities may receive Complaints alleging violations of a Reliability Standard. ~~A Regional Entity~~The Compliance Enforcement Authority will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for initiating another compliance monitoring ~~and~~ enforcement process, except that NERC will review any Complaint ~~(1) that is related to a Regional Entity or its affiliates, divisions, committees or subordinate structures, (2) where the Compliance Enforcement Authority~~Regional Entity determines it cannot conduct the review, or ~~(3) if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.~~

If the Complaint is submitted to NERC, NERC will forward the information to the Regional Entity, as appropriate.

All anonymous Complaints will be reviewed and any resulting compliance monitoring ~~and~~ enforcement processes conducted by NERC will be conducted in accordance with Section ~~3.8.23.7.2~~ to prevent disclosure of the identity of the complainant.

The Compliance Enforcement Authority conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment ~~of the Complaint to determine or~~ if it provides sufficient basis for initiating another compliance monitoring ~~and~~ enforcement process. The ~~Regional Entity~~Compliance Enforcement Authority will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, the Compliance Enforcement Authority determines that initiating another compliance monitoring ~~and~~ enforcement process is warranted, the Compliance Enforcement Authority shall conduct that compliance monitoring ~~and~~ enforcement process ~~will be conducted~~ in accordance with the applicable provisions of Section 3.0.

3.8.13.7.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows:⁺

- The complainant notifies NERC or a Regional Entity using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. NERC and the Regional Entity shall post a link to the Complaint reporting form ~~will be posted on the NERC and Regional Entity~~their respective websites. The Complaint should include sufficient information to enable NERC or the Regional Entity to make an assessment ~~of~~regarding whether the initiation of another compliance monitoring ~~and~~ enforcement process is warranted. NERC or the Regional Entity may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.
- If the Compliance Enforcement Authority determines that initiation of another compliance monitoring ~~and~~ enforcement process is warranted, it initiates the compliance monitoring ~~and~~ enforcement process in accordance with the applicable

⁺~~If no Possible Violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.~~

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provisions of Section 3.0 or Section 5.0; otherwise it takes no further action. The Compliance Enforcement Authority notifies the complainant, the Registered Entity, and NERC of the initiation of the compliance monitoring ~~or~~ enforcement process. If the Compliance Enforcement Authority determines that initiation of another compliance monitoring ~~or~~ enforcement process is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

- The Compliance Enforcement Authority fully documents the Complaint and the Complaint review, and whether another compliance monitoring ~~or~~ enforcement process is ~~warranted~~initiated or not.

3.8.23.7.2 **Anonymous Complainant Notification Procedure**

~~An~~ ~~anonymous~~ complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, and wishes to remain anonymous, can report the information and request that the complainant's identity not be disclosed.² All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section ~~3.7.13-8.1~~. Anonymous Complaints received by a Regional Entity will either be directed to NERC or the Regional Entity will collect and forward the information to NERC, at the Regional Entity's discretion. Neither NERC nor the Regional Entity shall disclose the identity of any person or entity reporting information indicating violations of Reliability Standards to NERC or to a Regional Entity that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where a Regional Entity collects the information, by NERC and the Regional Entity. If the Compliance Enforcement Authority determines that initiation of another compliance monitoring and enforcement process is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

3.8 **Preliminary Screen**

If the Compliance Enforcement Authority obtains information, through one of the compliance monitoring processes described in this Section 3.0 or by any other means, that indicates a potential noncompliance with a Reliability Standard Requirement, the Compliance Enforcement Authority shall conduct a Preliminary Screen of the potential noncompliance. The Preliminary Screen shall be conducted within five (5) business days after the Compliance Enforcement Authority identifies the potential noncompliance, except that (i) if the Compliance Enforcement Authority identifies the potential noncompliance during a Compliance Audit, the Preliminary Screen shall be conducted immediately following the exit briefing of the Registered Entity, and (ii) if the Compliance Enforcement Authority 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.

A Preliminary Screen shall be limited to determining whether:

²NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that ~~to~~ do not want his/her/its identity disclosed (see www.nerc.com for additional information).

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- (1) the entity allegedly involved in the potential noncompliance is a Registered Entity;
- (2) the Reliability Standard Requirement to which the evidence of potential noncompliance relates is applicable to the entity, has been approved by the Applicable Governmental Authority, and is in effect at the time of the potential noncompliance; and
- (3) if known, the potential noncompliance is not a duplicate of a Possible Violation or Alleged Violation that is currently being processed.

If the Preliminary Screen results in an affirmative determination with respect to the above criteria, a Possible Violation exists and the Compliance Enforcement Authority shall proceed in accordance with Section 5.0, unless an alternative enforcement process is used.

The Compliance Enforcement authority shall maintain records of all Preliminary Screens.

4.0 ANNUAL IMPLEMENTATION PLANS

4.1 NERC Compliance Monitoring and Enforcement Program Implementation Plan

NERC will maintain and update the NERC Implementation Plan, to be carried out by Compliance Enforcement Authorities in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the Regional Entities by October on or about September 1 of each year and will specify the Reliability Standards requiring reporting by Registered Entities to the Compliance Enforcement Authority to provide verification of compliance through one of the monitoring methods described in this Compliance Program ~~document~~. The NERC Implementation Plan will be posted on the NERC website. NERC may update and revise the NERC Implementation Plan during the course of the year as necessary. Regional Entities have discretion to make modifications to the NERC Implementation Plan with respect to individual Registered Entities.

4.2 Regional Implementation Plan

By November on or about October 1 of each year, each Regional Entityies will submit a Regional Implementation Plan for the following calendar year to NERC for review and approval. The Regional Implementation Plan and the Regional Entity's other relevant Compliance Program documents shall be posted on the Regional Entity's website. The Regional Entity may update and revise the Regional Entity Implementation Plan during the course of the year as necessary, with NERC approval, or as required by NERC. Regional Entities have discretion to make modifications to the Regional Entity Implementation Plan with respect to individual Registered Entities.

5.0 ENFORCEMENT ACTIONS

The Compliance Enforcement Authority shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the Compliance Enforcement Authority's

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Area of Responsibility, and (ii) if so, the appropriate ~~remedial actions~~Mitigating Activities, and Penalties and sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction Guidelines* by Regional Entities by direct oversight and review of Penalties and sanctions, and each Regional Entity shall provide to NERC such information as is requested by NERC concerning any Penalty, sanction, or ~~remedial actions~~Mitigating Activities imposed by the Regional Entity.

The imposition and acceptance of Penalties and sanctions shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards.

The Compliance Enforcement Authority has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting 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 Section 1500 of the Rules of Procedure 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. Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a ~~party~~Registered Entity believes that a request for Documents, data or information is unreasonable, the ~~party~~Registered Entity may request a written determination from the NERC ~~general counsel~~director of enforcement. If Documents, data or information requested from a Registered Entity in connection with an enforcement process are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data.**

The following enforcement process is undertaken by the Compliance Enforcement Authority following identification, ~~through one of the compliance monitoring and enforcement processes set forth in Section 3.0, of a Possible Violation~~evidence of noncompliance with a Reliability Standard Requirement by a Registered Entity. However, under the circumstances presented by some Possible Violations, Alleged Violations or Confirmed Violations, absolute adherence to the following enforcement process, 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 Compliance Enforcement Authority and the Registered Entity. In such circumstances, other approaches may be considered and employed. The Registered Entity shall be entitled to object to the use of any such other approach.

5.1 Preliminary Screen

~~If the Compliance Enforcement Authority identifies or obtains evidence of potential noncompliance with a Reliability Standard, the Compliance Enforcement Authority shall perform a Preliminary Screen to determine whether there is a Possible Violation. A Preliminary Screen shall be limited to determining whether:~~

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- ~~(i) the entity allegedly involved in the potential noncompliance is a Registered Entity; and~~
- ~~(ii) the Reliability Standard Requirement to which the evidence of potential noncompliance relates is applicable to a reliability function for which the entity is registered.~~

~~The Compliance Enforcement Authority shall complete the Preliminary Screen within five (5) business days after identifying or obtaining evidence of potential noncompliance with a Reliability Standard.~~

~~The Compliance Enforcement Authority shall maintain records of all Preliminary Screens.~~

5.1 Notice of Possible Violation

If a Preliminary Screen conducted in accordance with Section 3.8 results in an affirmative determination with respect to the Preliminary Screen~~above~~ criteria, a Possible Violation exists. The Compliance Enforcement Authority shall issue a Notice of Possible Violation to the Registered Entity. The Notice of Possible Violation shall:

- (i) state that a Possible Violation by the Registered Entity has been identified;
- (ii) provide a brief description of the Possible Violation, including the Reliability Standard requirement(s) and, if known, the date(s) involved; and
- (iii) instruct the Registered Entity to retain and preserve all data and records relating to the Possible Violation.

Upon issuing a Notice of Possible Violation, the Compliance Enforcement Authority reports ~~enters~~ the Possible Violation into the~~to~~ NERC compliance reporting and tracking system. NERC reports the Possible Violation to the NERC Board of Trustees Compliance Committee and submits a Notice of Possible Violation, on a confidential basis, to FERC and to other Applicable Governmental Authorities, as applicable. Any such notice to FERC or to other Applicable Governmental Authorities shall be provided in accordance with Section 8.0, Reporting and Disclosure.

5.25.2 Assessment of Possible Violation

After issuing a Notice of Possible Violation, the Compliance Enforcement Authority shall conduct an assessment of the facts and circumstances surrounding the Possible Violation to determine whether evidence exists to indicate the Registered Entity has violated the Reliability Standard Requirement(s) identified in the Notice of Possible Violation, or whether the Possible Violation should be dismissed. The Compliance Enforcement Authority may consider any additional information to demonstrate that the Possible Violation should be dismissed or modified.

5.35.3 Notification to Registered Entity of Alleged Violation

If the Compliance Enforcement Authority determines, based on an assessment of the facts and circumstances surrounding a Possible Violation, that evidence exists to indicate a Registered Entity has violated a Reliability Standard, ~~and the Compliance Enforcement Authority and the~~

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~~Registered Entity have not entered into settlement negotiations pursuant to Section 5.6, the~~ Compliance Enforcement Authority shall notify the Registered Entity of the determination of the Alleged Violation, through issuance of issue a Notice of Alleged Violation and Proposed Penalty or Sanction or similar notification, and shall report the Alleged Violation to NERC (signed by an officer or designee of the Compliance Enforcement Authority) to the Registered Entity (CEO or equivalent and compliance contact) and shall enter the Alleged Violation into the NERC compliance reporting and tracking system. The notification of Alleged Violation shall be transmitted by the Compliance Enforcement Authority to the Registered Entity by electronic mail and shall be effective as of the date of the electronic mail message from the Compliance Enforcement Authority transmitting the notification. The ~~Notie~~notification of Alleged Violation shall include~~state~~, at a minimum:

- ~~(ii)~~(i) the Reliability Standard and Requirement(s) thereof the Registered Entity has allegedly violated,
- ~~(iii)~~(ii) the date and time the Alleged Violation occurred (or is occurring),
- ~~(iv)~~(iii) the facts the Compliance Enforcement Authority believes demonstrate or constitute the Alleged Violation,
- ~~(v)~~(iv) the proposed Penalty or sanction, if any, determined by the Compliance Enforcement Authority to be applicable to the Alleged Violation in accordance with the NERC *Sanction Guidelines*, including an explanation of the basis on which the particular Penalty or sanction was determined to be applicable,
- ~~(vi)~~(v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the Compliance Enforcement Authority will deem the Registered Entity to have accepted the determination of violation and proposed Penalty or sanction:
 1. agree with the Alleged Violation and proposed Penalty or sanction, and agree to submit and implement a Mitigation Plan or other Mitigating Activities to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.4, or
 2. agree with the Alleged Violation and agree to submit and implement a Mitigation Plan or other Mitigating Activities to eliminate the violation and its underlying causes, but contest the proposed Penalty or sanction, and may provide a response in accordance with Section 5.4, or
 3. contest both the Alleged Violation and proposed Penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed Penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed Penalty or sanction;
- (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed Penalty or sanction, the Registered Entity may elect to have a

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hearing conducted pursuant to either (i) the short-form procedure in Section 1.3.41-3-2, or (ii) the fullgeneral hearing procedure, in **Attachment 2, Hearing Procedures**, and

(viii) required procedures to submit the Registered Entity's Mitigation Plan.

~~NERC shall forward a copy of the Notice of Alleged Violation to notify FERC of the Alleged Violation and, if the Alleged Violation pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, shall notify such other Applicable Governmental Authority of the Alleged Violation, within two (2) business days of receipt from the Compliance Enforcement Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the Bulk Power System to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. Any such notice to FERC or to another Applicable Governmental Authority shall be provided in accordance with Section 8.0, Reporting and Disclosure.~~

~~Upon acceptance by the Registered Entity of the Alleged Violation and proposed Penalty or sanction, the Notice of Confirmed Violation or other enforcement action will then be processed and issued to the Registered Entity.~~

5.45.4 Registered Entity Response

If the Registered Entity agrees with, does not contest, or does not respond to the notification ~~Notice~~ of Alleged Violation within thirty (30) days following the date of the notification of Alleged Violation by electronic mail, it shall be deemed to have accepted the Compliance Enforcement Authority's determination of violation and Penalty or sanction, ~~in which case and~~ the Compliance Enforcement Authority shall issue a Notice of Confirmed Violation or similar notification to the Registered Entity and shall enterreport the Confirmed Violation into the NERC compliance reporting and tracking system. At the time of notifying the Registered Entity ~~issuing the Notice of the Confirmed Violation to the Registered Entity~~, the Compliance Enforcement Authority ~~Regional Entity~~ shall also provide notice to the Registered Entity that it may provide a written explanatory statement to accompany the filing with FERC and public posting ~~Notice~~ of the Confirmed Violation. The Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

If the Registered Entity contests the Alleged Violation or the proposed Penalty or sanction, the Registered Entity shall submit to the Compliance Enforcement Authority, within thirty (30) days following the date of the notification of the Alleged Violation, a response explaining its position, signed by an officer, employee, attorney or other authorized representative together with any supporting information and documents. The Compliance Enforcement Authority shall schedule

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a conference with the Registered Entity within ten (10) business days after receipt of the response. If the Compliance Enforcement Authority and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. The Compliance Enforcement Authority and the Registered Entity may agree in writing to extend the forty (40) day period. If no hearing request is made prior to the end of the forty (40) day period, the violation will become a Confirmed Violation, ~~in which case the Compliance Enforcement Authority shall issue a Notice of Confirmed Violation to the Registered Entity and to NERC.~~

If a hearing is requested the Compliance Enforcement Authority shall initiate the hearing process ~~in accordance with Attachment 2, Hearing Procedures by convening a Hearing Body and issuing a written notice of hearing to the Registered Entity and the Hearing Body and identifying the Compliance Enforcement Authority's designated hearing representative.~~³

5.55.5 Hearing Process for Compliance Hearings

The Compliance Enforcement Authority hearing process is set forth in **Attachment 2**.

5.65.6 Settlement Process

The Registered Entity can request settlement negotiations at any time, including prior to the issuance of ~~notification of an~~ Notice of Alleged Violation; however, the Compliance Enforcement Authority may decline to engage in or to continue settlement negotiations after a Possible Violation or Alleged Violation becomes a Confirmed Violation in accordance with Section 5.4. ~~The Registered Entity or the Compliance Enforcement Authority may terminate settlement negotiations at any time. Where the Compliance Enforcement Authority has agreed to engage in settlement negotiations, the running of the time period specified in Section 5.4 for the Registered Entity to respond to the notification of Alleged Violation is suspended until settlement negotiations are concluded or terminate.~~ NERC shall be notified of all settlement negotiations and may participate in any settlement negotiations. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the Compliance Enforcement Authority shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf.

The Compliance Enforcement Authority may consider all relevant facts in settlement negotiations. A settlement agreement must ensure that the reliability of the Bulk Power System will not be compromised by the settlement and that a violation of a Reliability Standard will not occur as a result of the settlement. All settlement agreements must provide, if the settlement is approved, for waiver of the Registered Entity's right to further hearings and appeal.

The Compliance Enforcement Authority and the Registered Entity will execute a settlement agreement ~~issue a letter~~ setting forth the final settlement terms including all Penalties, sanctions and mitigation requirements provided for in the final settlement.

³~~If the dispute involves a proposed Mitigation Plan, which has not been accepted by the Compliance Enforcement Authority, the Registered Entity may file a request for hearing with the Compliance Enforcement Authority.~~

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The ~~Regional Entity~~ Compliance Enforcement Authority shall report the terms of all settlements of compliance matters to NERC. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances. The Registered Entity may submit an explanatory statement, conforming to the requirements of Section 5.4, to be included in the settlement agreement and which shall be subject to consent of the Compliance Enforcement Authority as part of the settlement agreement. The settlement agreement may state that the Registered Entity (i) admits the Alleged Violation, or (ii) does not contest the Alleged Violation, or (iii) neither admits nor denies the Alleged Violation, but may not state that the Registered Entity denies the Alleged Violation. Based on this review, NERC will either approve the settlement or reject the settlement and notify the ~~Compliance Enforcement Authority~~ Regional Entity and the Registered Entity of any changes to the settlement that would result in approval, and within five (5) business days the Compliance Enforcement Authority will in turn notify the Registered Entity. If NERC rejects the settlement, the ~~Regional Entity~~ Compliance Enforcement Authority will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will report the approved settlement of the violation to FERC and, if the settlement relates to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority.⁵ Any such report shall be provided in accordance with Section 8.0, Reporting and Disclosure, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the Bulk Power System to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will also publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting Penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement, and a copy of any Mitigation Plan that is agreed to as part of the settlement, with any Critical Energy Infrastructure Information and Confidential Information redacted. The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all Penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Notices of Confirmed Violations are addressed in Section 8.0.

5.75.7 NERC Appeal Process

~~The~~ A Registered Entity or the Compliance Enforcement Authority may appeal the decision of a Regional Entity Hearing Body's ~~decision~~ to NERC, as provided for in NERC Rules of Procedure, Section 409.⁴

⁴~~This process generally completes within ninety (90) days of NERC's receipt of request for appeal.~~

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On appeal, NERC shall either affirm the ~~Regional Entity~~ decision or remand to the Compliance Enforcement Authority~~Regional Entity~~ with reasons for its remand, which may include a direction to the ~~Regional Entity~~Compliance Enforcement Authority to revise the decision. If NERC affirms the ~~Regional Entity~~ decision, the ~~Regional Entity~~Compliance Enforcement Authority shall issue a Notice of Confirmed Violation to the Registered Entity. If NERC directs the ~~Regional Entity~~Compliance Enforcement Authority to revise ~~its~~the decision, ~~the~~ Registered Entity that was the subject of the decision or the Compliance Enforcement Authority~~Staff of the Regional Entity~~ whose interests are adversely affected by the directed revision may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed.

5.85.8 Approval of a NoticeNotification of Confirmed Violation

A Notice or other notification of Confirmed Violation issued to a Registered Entity pursuant to Sections 5.4 or 5.7 shall include a detailed record of the enforcement action, including the facts and circumstances analyzed and the information on which the Compliance Enforcement Authority relied in proposing a Penalty or sanction.

After ~~NERC receives~~receiving a ~~Notice~~notification of Confirmed Violation ~~through the NERC compliance reporting and tracking system~~from the Compliance Enforcement Authority, NERC shall review the ~~Notice~~notification of Confirmed Violation and utilize the information therein to prepare a Notice of Penalty. NERC shall advise the Compliance Enforcement Authority~~Regional Entity~~ of any additional detail or further development of the factual findings that NERC deems necessary before the Notice of Penalty can be issued.

NERC may direct the Compliance Enforcement Authority~~Regional Entity~~ to revise a Penalty determination, in which case the Registered Entity subject to the Penalty, or the Compliance Enforcement Authority, ~~as applicable~~Staff of the Regional Entity, may reopen the proceedings on any issue on which the Penalty was based, irrespective of whether the issue was previously litigated, settled or unopposed.

5.95.9 Notice of Penalty

If (i) the Registered Entity ~~accepts~~does not dispute the Notice of Alleged Violation and Proposed Penalty or Sanction or other notification of enforcement action from the Compliance Enforcement Authority ~~and the proposed Penalty or sanction~~, or (ii) a decision has been entered affirming an finding a Alleged ~~violation~~ and all appeals have been concluded, or (iii) a settlement agreement has been reached addressing the Possible Violation or Alleged Violation~~(s)~~, NERC shall ~~submit~~prepare a ~~draft~~ Notice of Penalty to the Applicable Governmental Authority and provide a copy to the Compliance Enforcement Authority~~Regional Entity~~. The ~~Regional Entity~~Compliance Enforcement Authority shall inform the Registered Entity that a Notice of Penalty is pending public filing, at least five (5) business days prior to the public filing and posting. NERC will file the Notice of Penalty with FERC and any other Applicable Governmental Authority, ~~as provided in the next paragraph~~, no sooner than five (5) business days after NERC approves the Notice of Confirmed Violation or settlement agreement.

NERC shall file the Notice of Penalty with FERC and, if the Possible Violation or Alleged Violation pertains to a Registered Entity or to a portion of the Bulk Power System over which

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another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. Any such filing with FERC or with another Applicable Governmental Authority shall be made in accordance with Section 8.0, Reporting and Disclosure,; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the Bulk Power System to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will include with the Notice of Penalty any statement provided by the Registered Entity as set forth in Sections 5.4 or ~~5-75.6~~.

The Penalty or sanction will be effective upon expiration of the thirty (30) day period following filing with FERC of the Notice of Penalty (or such longer period as ordered by FERC) or, if FERC decides to review the Penalty or sanction, upon final determination by FERC.

5.10 ClosureCompletion of Enforcement Action

Following FERC approval of, or expiration of the period for action by FERC on, a Notice of Penalty filed by NERC, the Compliance Enforcement Authority shall issue a payment due notice and invoice to the Registered Entity. The payment due notice and invoice shall state the payment due date which shall be thirty (30) days from the date of the payment due notice and invoice. Upon payment of all monetary Penalties by the Registered Entity, the Compliance Enforcement Authority shall issue a notice confirming payment to the Registered Entity, and provide a copy of the notice confirming payment to NERC. Following the completion by the Registered Entity of all requirements set forth in the Notice of Penalty and any settlement agreement, the Compliance Enforcement Authority shall issue the Registered Entity a Notice of Completion of Enforcement Action.

If the Compliance Enforcement Authority dismisses or disposes of a Possible Violation or Alleged Violation that does not become a Confirmed Violation, the Compliance Enforcement Authority shall issue a Notice of Completion of Enforcement Action to the Registered Entity.

A copy of the Notice of Completion of Enforcement Action shall also be provided to NERC by the Compliance Enforcement Authority.

The Notice of Completion of Enforcement Action shall include a release of any data retention directives that were previously issued to the Registered Entity in connection with the matter. Upon issuance of a Notice of Completion of Enforcement Action, tracking of the violation is completed, and the enforcement action shall be closed.

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

A Registered Entity that is an ISO/RTO may have authority to allocate, pursuant to a proceeding under section 205 of the Federal Power Act, some or all of a monetary Penalty imposed on the ISO/RTO for violation of a Reliability Standard, to another entity(ies) that the Compliance

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Enforcement Authority, NERC or FERC determines was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation of the Reliability Standard. This section sets forth the procedures to be followed when an ISO/RTO that has received a Notice of Possible Violation requests a determination by the Compliance Enforcement Authority that another entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation (if confirmed) identified in the Notice of Possible Violation.

The procedures in this section apply only where an ISO/RTO requests a determination that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation (if confirmed) identified in a Notice of Possible Violation issued to the ISO/RTO, and shall not apply where the ISO/RTO anticipates or is entitled to allocate or assign a monetary Penalty among all, or an identified segment of, its members, customers or users, pursuant to general cost recovery provisions in the ISO/RTO's tariffs, agreements or governance documents and regardless of actual fault or responsibility of the entities to whom the monetary Penalty is issued for the violation.

5.11.1 ISO/RTO's Request for Determination and Notice to Other Entity(ies)

In order to request the Compliance Enforcement Authority 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 (10) business days after receiving the Notice of Possible Violation or such additional period as the Compliance Enforcement Authority may permit for good cause shown (i) submit a written request to the Compliance Enforcement Authority and (ii) issue a notice to the specified other entity(ies), each conforming to the requirements of the following two paragraphs of this section.

The ISO/RTO's written request to the Compliance Enforcement Authority shall contain:

- (1) the Compliance Enforcement Authority's identification number for the Notice of Possible Violation;
- (2) a statement that the ISO/RTO is requesting that the Compliance Enforcement Authority make a determination that a specified other entity(ies) was responsible, in whole or in part, for actions and omissions that caused or contributed to the violation (if confirmed) identified in the Notice of Possible Violation;
- (3) the name(s) of, and contact information for, the specified other entity(ies), including name(s) and address(es) of the entity(ies) and name(s), telephone number(s) and e-mail address(es) of the contact person(s) for the other entity(ies);
- (4) 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, and a brief explanation to show that the specified other entity(ies) are subject to the tariffs, agreements, orders and/or other governance documents; and

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- (5) 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 (if confirmed) identified in the Notice of Possible Violation. As the enforcement action proceeds, the ISO/RTO may supplement, expand or modify this explanation as additional information becomes available during the course of the enforcement action.

The ISO/RTO's notice to the specified other entity(ies) shall contain the following information:

- (1) The name of the specified other entity, and the name, telephone number and e-mail address of the specified other entity's contact person (person to whom the notice is being sent);
- (2) A statement that the ISO/RTO has received a Notice of Possible Violation from the Compliance Enforcement Authority, the Compliance Enforcement Authority's identification number for the Notice of Possible Violation, and contact information for the Compliance Enforcement Authority;
- (3) A statement that the ISO/RTO has requested the Compliance Enforcement Authority to determine that the specified other entity 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, and that the ISO/RTO intends to seek to allocate to the specified other entity all or a portion of any monetary Penalty that is imposed on the ISO/RTO for the violation (if confirmed), if the Compliance Enforcement Authority determines the specified other entity 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.
- (4) A statement that the specified other entity should promptly contact the Compliance Enforcement Authority for further information and to request to participate in the enforcement action relating to the Notice of Possible Violation.

The ISO/RTO shall cause its notice to the specified other entity(ies) to be delivered to the other entity(ies) by next-business-day delivery using a delivery service that provides verification of delivery. The ISO/RTO shall provide the Compliance Enforcement Authority with (i) a copy of the notice sent to each specified other entity, and (ii) a copy of the delivery service's verification of delivery of the notice to each specified other entity.

5.11.2 Responses of the Compliance Enforcement Authority and the Specified Other Entity(ies) to ISO/RTO's Request for Determination and Notice

If (i) the ISO/RTO's written request meets the requirements of Section 5.11.1, the Compliance Enforcement Authority shall provide the specified other entity(ies) with a copy of a non-disclosure agreement (which shall include the specified other entity's agreement to comply with the confidentiality requirements of the Compliance Program and of Section 1500 of the NERC

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Rules of Procedure) that must be executed to obtain a copy of the Notice of Possible Violation and a copy of the ISO/RTO's written request to the Compliance Enforcement Authority for a determination that the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation (if confirmed) identified in the Notice of Possible Violation. In addition, the Compliance Enforcement Authority shall advise the specified other entity(ies) that: (i) the specified other entity(ies) may elect not to participate in the enforcement action, and may submit a written statement to the Compliance Enforcement Authority stating why the specified other entity is not participating and providing any facts or information the other entity wishes to provide concerning the occurrence(s) that are the subject of the Notice of Possible Violation, and (ii) whether or not the specified other entity elects to participate in the enforcement action, the Compliance Enforcement Authority may determine that the specified other entity 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.

If the ISO/RTO's written request meets the requirements of Section 5.11.1, then the specified other entity(ies) shall be permitted to participate in the enforcement action concerning the Notice of Possible Violation if the other entity(ies) submits a written request to participate to the Compliance Enforcement Authority and executes a non-disclosure agreement in the form provided by the Compliance Enforcement Authority. The specified other entity must submit its written request to participate prior to, as applicable (i) the date of execution of a settlement agreement between the Compliance Enforcement Authority and the ISO/RTO, or (ii) the date that the Compliance Enforcement Authority issues a Notice of Confirmed Violation to the ISO/RTO. The Compliance Enforcement Authority is not required to suspend or delay the enforcement process pending receipt of a request to participate from the specified other entity(ies), nor to revisit or redo any aspect of the enforcement process that has already occurred prior to receipt of the specified other entity(ies)'s written request to participate; however, upon receipt of a written request to participate and executed nondisclosure agreement from the specified other entity(ies), the Compliance Enforcement Authority shall suspend activity in the enforcement action until it has acted on the request to participate.

Upon receiving the specified other entity's written request to participate in the enforcement action and the other entity's executed nondisclosure agreement, the Compliance Enforcement Authority 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. The Compliance Enforcement Authority's notice that the specified other entity is allowed to participate in the enforcement action shall include a copy of the Notice of Possible Violation originally issued to the ISO/RTO and, if a Notice of Alleged Violation and Proposed Penalty or Sanction or similar notification has been issued to the ISO/RTO, a copy of the latter Notice or notification. Upon receiving notice from the Compliance Enforcement Authority that it is allowed to participate in the enforcement action, the specified other entity may participate in the same manner as the ISO/RTO and shall be subject to all applicable requirements and deadlines specified in the NERC Compliance Program.

If the ISO/RO fails to meet the requirements of Section 5.11.1, the Compliance Enforcement Authority shall issue a notice to the ISO/RTO and to the specified other entity(ies) stating that the Compliance Enforcement Authority will not make the determination requested by the

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ISO/RTO and therefore the specified other entity will not be allowed to participate in the enforcement action relating to the Notice of Possible Violation.

5.11.3 Compliance Enforcement Authority's Notices to NERC

(a) Within five (5) business days after receiving an ISO/RTO's written request for a determination that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to a violation identified in the Notice of Possible Violation issued to the ISO/RTO, the Compliance Enforcement Authority shall provide to NERC (i) a copy of the ISO/RTO's written request for a determination that a 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, and (ii) the ISO/RTO's notice to the specified other entity(ies).

(b) On the same day that the Compliance Enforcement Authority issues a notice pursuant to Section 5.11.2 stating, as applicable, that (i) it will or will not make the determination requested by the ISO/RTO or (ii) the specified other entity(ies) are or are not allowed to participate in the enforcement action, the Compliance Enforcement Authority shall provide a copy of the notice to NERC and shall send a copy of the notice to any other entities that have been allowed to participate in the enforcement action.

5.11.4 Compliance Enforcement Authority's Determination

After issuing a notice pursuant to Section 5.11.3 that it will make a determination as to whether the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation that is the subject of the Notice of Possible Violation issued to the ISO/RTO, then, 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 Compliance Enforcement Authority shall make, and include in its proposed Notice of Penalty, its determination of whether or not the specified other entity(ies) were responsible, in whole or in part, for actions or omissions that caused or contributed to the violation. The Compliance Enforcement Authority'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).

The specified other entity(ies) shall be entitled to request a hearing on the Compliance Enforcement Authority's determination pursuant to Section 1.3.1 of Attachment 2 of this Appendix 4C, and to appeal the Hearing Body's decision pursuant to Section 1.7.10 of Attachment 2 to this Appendix 4C, as though the specified other entity(ies) were a Registered Entity(ies).

5.11.5 Procedure Where ISO/RTO Members Are Allowed to Directly Assign Monetary Penalties for Violations of Reliability Standards to the ISO/RTO

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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 Sections 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 Sections 5.11.1, 5.11.2, and 5.11.4, subject to the same requirements and conditions specified in those sections. In such circumstances, the ISO/RTO shall be deemed to be a "specified other entity" for purposes of this Section.

5.11.6 Obligation to Pay Monetary Penalty

(a) The ISO/RTO shall be obligated and responsible to pay any monetary Penalty imposed by the Compliance Enforcement Authority on the ISO/RTO for violation of a Reliability Standard, in accordance with Section 5.10, (i) regardless of whether the Compliance Enforcement Authority 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).

(b) In an enforcement action subject to Section 5.11.5, the ISO/RTO member(s) shall be obligated and responsible to pay any monetary Penalty imposed by the Compliance Enforcement Authority on the ISO/RTO member(s) for violation of a Reliability Standard, regardless of whether or when the ISO/RTO members receive payment or reimbursement from the ISO/RTO.

6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS

The Compliance Enforcement Authority has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting 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 Section 1500 of the Rules of Procedure 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. Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a Registered Entity believes that a request for Documents, data or information is unreasonable, the Registered Entity may request a written determination from the NERC ~~general counsel~~ director of enforcement. 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 Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

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6.1 Requirement for Submission of Mitigation Plans

A Registered Entity found to be in violation of a Reliability Standard shall file with the Compliance Enforcement Authority (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation. A Registered Entity may also submit a proposed Mitigation Plan at any other time, including with a Self-Report, or, without admitting it has committed a violation, in response to a Notice of Possible Violation or [Notice notification](#) of Alleged Violation.

6.2 Contents of Mitigation Plans

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Possible, Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Possible, Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Possible, Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the cause of the Possible, Alleged or Confirmed Violation.
- The Registered Entity's action plan to prevent recurrence of the Possible, Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the Bulk Power System reliability and an action plan to mitigate any increased risk to the reliability of the Bulk Power System while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Possible, Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate.

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The Mitigation Plan shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity, ~~which if applicable, shall be the person that signed the Self-Certification or Self-Reporting submittals.~~

6.3 Timetable for Completion of Mitigation Plans

The Mitigation Plan shall be completed in ~~accordance with its terms, time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay, and should encompass actions necessary to prevent a recurring violation of the Reliability Standard Requirements underlying the Possible, Alleged or Confirmed Violation(s). The Compliance Enforcement Authority will expect full compliance with the Reliability Standard to which the Mitigation Plan is applicable at the next report or assessment of the Registered Entity.~~ At the Compliance Enforcement Authority's discretion, the completion deadline may be extended for good cause including, but not limited to: (i) operational issues such as the inability to schedule an outage to complete Mitigating Activities, short assessment periods (i.e., event driven or monthly assessments), and (ii) construction requirements in the Mitigation Plan that require longer to complete than originally anticipated extend beyond the next assessment period or other extenuating circumstances. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by the Compliance Enforcement Authority with associated sanctions or Penalties. Regional Entities will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with Penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, the Compliance Enforcement Authority will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no Penalties or sanctions will apply. Regional Entities will also notify NERC of any such waivers of violations of Reliability Standards.

A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the Compliance Enforcement Authority at least five (5) business days before the original milestone or completion date. The Compliance Enforcement Authority may accept a request for an extension or modification of a Mitigation Plan if the Compliance Enforcement Authority determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by the Regional Entity acting as Compliance Enforcement Authority or the Hearing Body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any Penalties or sanctions imposed for such violations.

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6.4 Submission of Mitigation Plans

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the ~~Notice~~notification of Alleged Violation, if the Registered Entity does not contest the Alleged Violation and Penalty or sanction, or shall be reflected in a settlement agreement or Notice of Penalty. If the Registered Entity disputes the ~~Notice of~~ Alleged Violation or the Penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the Hearing Body, unless the Registered Entity elects to appeal the Hearing Body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or Penalty or sanction or in response to a Notice of Possible Violation; such submission shall not be deemed an admission of a violation or the appropriateness of a Penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the Regional Entity acting as Compliance Enforcement Authority or the Hearing Body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the Compliance Enforcement Authority before the Hearing Body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans

Unless the time period is extended by the Compliance Enforcement Authority, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. In order to extend the initial or an extended period for review of the Mitigation Plan, the Compliance Enforcement Authority shall, within the initial or extended review period, notify the Registered Entity (and NERC if NERC is not the Compliance Enforcement Authority) that the review period is being extended and identify the date by which the Compliance Enforcement Authority will complete its review of the Mitigation Plan. The Compliance Enforcement Authority's extension notice shall also state that if the Compliance Enforcement Authority has not issued a notice by the end of the extended review period either stating that the Compliance Enforcement Authority accepts or rejects the proposed Mitigation Plan or further extending the Compliance Enforcement Authority's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted.

If the Compliance Enforcement Authority rejects a Mitigation Plan, the Compliance Enforcement Authority will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The Compliance Enforcement Authority will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the Compliance Enforcement Authority will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedures, by submitting to the Compliance Enforcement Authority a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the Compliance Enforcement Authority will issue a written statement accepting a Mitigation Plan it deems as appropriate.

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Within five (5) business days after a Regional Entity accepts a Mitigation Plan, the Regional Entity (i) will notify NERC and the Registered Entity of the acceptance of the Mitigation Plan and (ii) will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and, within thirty (30) days following its receipt of the Mitigation Plan from the Regional Entity, will notify the Regional Entity and the Registered Entity, on a contemporaneous basis, as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the Regional Entity, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. The Registered Entity shall not be subject to findings of violations of the specific Requirements of Reliability Standards that are the subject of the Mitigation Plan or to imposition of Penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC's disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC.

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

NERC will submit to FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC shall publicly post the approved Mitigation Plan as part of the public posting of the related Notice of Penalty in accordance with Section 8.0 or settlement in accordance with Section 5.6.

6.6 Completion/Confirmation of Implementation of Mitigation Plans

The Registered Entity shall provide updates at least quarterly to the Compliance Enforcement Authority on the progress of the Mitigation Plan. The Compliance Enforcement Authority will track the Mitigation Plan to completion and may conduct on-site visits and review status during Compliance Audit to monitor Mitigation Plan implementation.

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Upon completion of the Mitigation Plan, the Registered Entity shall provide to the Compliance Enforcement Authority certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for the Compliance Enforcement Authority to verify completion. The Compliance Enforcement Authority shall request such data or information and conduct follow-up assessments, on-site or other Spot Checksing, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard Requirement(s).

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the Compliance Enforcement Authority. In addition, the Compliance Enforcement Authority may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

Upon request by NERC, the Regional Entityies will provide to NERC the quarterly status reports and such other information as NERC requests, and The Regional Entity will notify NERC when each Mitigation Plan is verified to have been completed.

6.7 Recordkeeping

The Compliance Enforcement Authority will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Reporting, Compliance Audit, Compliance Investigation, Complaint, etc.
- Date(s) of Notice of Possible Violation and Noticeenotification of Alleged Violation (if applicable).
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.

7.0 REMEDIAL ACTION DIRECTIVES

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The Compliance Enforcement Authority may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to a Possible Violation or an Alleged Violation of a Reliability Standard. The Compliance Enforcement Authority will specify if/whether a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, the Regional Entity Compliance Enforcement Authority shall consult the Reliability Coordinator for the Registered Entity, ~~if applicable, to ensure that the Remedial Action Directive is not in conflict with directives issued by the Reliability Coordinator.~~

Any Remedial Action Directive must be provided in a notice to the Registered Entity and shall include: (i) a list of the Possible Violation(s) or Alleged Violation(s) of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) the requirements the Compliance Enforcement Authority is imposing to remove the imminent or actual threat to the reliability of the Bulk Power System; (iv) a deadline for compliance and a schedule for specific periodic updates to the Compliance Enforcement Authority; and (iv) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions.

The Compliance Enforcement Authority will cause the notice of the Remedial Action Directive to be delivered to the Registered Entity by (i) electronic mail means to the Registered Entity's CEO or equivalent and copied to the Registered Entity's designated contact person for reliability matters and (ii) by a recognized express courier service that provides tracking and verification of delivery to the recipient. 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 ~~date of~~ delivery as specified by the express courier service's verification of delivery ~~shall be the date of actual receipt of the Remedial Action Directive.~~ The Compliance Enforcement Authority will monitor implementation of Remedial Action Directives as necessary to verify compliance.

The Regional Entity Compliance Enforcement Authority will notify NERC within two (2) business days after issuing a Remedial Action Directive and will copy NERC on all correspondence sent to the Registered Entity.

Once the Compliance Enforcement Authority has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to the Compliance Enforcement Authority within two (2) business days

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following the date of actual receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures**. Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures** shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive until the hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

8.0 REPORTING AND DISCLOSURE

8.1 Information to be Reported

Regional Entities shall ~~prepare and promptly~~ submit to NERC ~~electronic all required~~ reports, containing current information concerning ~~the information listed below. NERC will work with Regional Entities to specify form, content, timing, and method of submitting reports and notices.~~

- (1) ~~The status of the review and assessment of Registered Entity compliance with Reliability Standards, (2) all Possible Violations, Alleged Violations and Confirmed Violations of Reliability Standards by Registered Entities, (3) the status of Possible Violations and Alleged Violations,~~
- (2) ~~The potential impact of any Alleged Violation or Confirmed Violation on the reliability of the Bulk Power System,~~
- (43) ~~sSanctions and Penalties,~~
- (54) ~~Remedial Action Directives imposed, and~~
- (65) ~~Mitigation Plan(s) accepted including dates for all required actions and for completion, and~~
- (6) ~~The name of a Regional Entity staff person knowledgeable about the information to serve as a point of contact.~~

8.2 Reporting to Applicable Governmental Authorities and Public Disclosure

~~Regional Entities shall report all Possible Violations, Alleged Violations and Confirmed Violations to NERC by promptly entering the Possible Violation, Alleged Violation or Confirmed Violation into the NERC compliance reporting and tracking system. Within two (2) business days of receiving a report from a Regional Entity of a Possible Violation, Alleged Violation, or Confirmed Violation, NERC shall notify FERC of the Possible Violation, Alleged Violation or Confirmed Violation, and,~~

~~w~~Where the report pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, ~~NERC~~ shall ~~also~~ notify such other Applicable Governmental Authority, within two (2) business days of receiving a report of a

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Possible Violation, Alleged Violation or Confirmed Violation from the Regional Entity; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, ~~and Likewise,~~ NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the Bulk Power System to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

~~In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities. The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity's compliance with a requirement of a Reliability Standard. Such reports shall include information regarding the nature of the Possible Violation, Alleged Violation or Confirmed Violation, the name of the Registered Entity involved, the status of any ongoing review and assessment of the Possible Violation, Alleged Violation, or Confirmed Violation, the name of a Regional Entity staff person knowledgeable about the information to serve as a point of contact, as required by 18 C.F.R. §39.7(b), and, in the case of an Alleged Violation or Confirmed Violation, its potential impact on the reliability of the Bulk Power System.~~

~~Regional Entities shall report to NERC, through the NERC compliance reporting and tracking system, the status of Possible Violations and Alleged Violations, regardless of significance, that have not yet resulted in a Notice of Confirmed Violation or have not completed the hearing process, or for which mitigation activities (including activities being carried out pursuant to a settlement agreement) have not been completed. Regional Entities will ensure the information is current when these reports are provided.~~

~~Regional Entities shall report a Confirmed Violation to NERC at the same time the Notice of Confirmed Violation is issued to the Registered Entity. NERC will publicly post on its website each Notice of Penalty, with any Critical Energy Infrastructure Information or other Confidential Information redacted (unless posting of the Critical Energy Infrastructure Information or Confidential Information has been determined to be permissible in accordance with Section 1500 of the Rules of Procedure) with the identify of the violator, together with any statement submitted by the Registered Entity, when NERC files the Notice of Penalty with FERC pursuant to Section 5.9.~~

NERC will provide reports quarterly to FERC and, where a report contains information pertaining to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, on the status of all Possible, Alleged and Confirmed Violations for which mitigation activities have not been completed. All such reports to FERC and to other Applicable

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~~Governmental Authorities shall be provided in accordance with this Section; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the Bulk Power System to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.~~

9.0 DATA RETENTION AND CONFIDENTIALITY

9.1 Records Management

The Compliance Enforcement Authority records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

9.2 Retention Requirements

The Compliance Enforcement Authority records management policy will require that information and data generated or received pursuant to Compliance Program activities, including Compliance Audits, Self-Certifications, Spot Checksing, Compliance Investigations, Self-Reportsing, Periodic Data Submittals, Exception Reporting, and Complaints, as well as a hearing process, will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC or another Applicable Governmental Authority. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

Upon request from NERC, Regional Entities will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity under the Compliance Program. In providing the information and data to NERC, the Regional Entity shall preserve any mark of confidentiality.

9.3 Confidentiality and Critical Energy Infrastructure Information

9.3.1 Definitions

Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “Confidential Information,” “Confidential

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Business and Market Information,” “Critical Energy Infrastructure Information,” and “Critical Infrastructure” shall have the meanings stated in Appendix 2 to the NERC Rules of Procedure.

9.3.2 Protection of Confidential Information

The Compliance Enforcement Authority personnel (including any contractors, consultants and industry subject matter experts) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning Confidential Information.

9.3.3 Critical Energy Infrastructure Information

The Compliance Enforcement Authority will keep confidential all Critical Energy Infrastructure Information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be Critical Energy Infrastructure Information shall be redacted, in accordance with Section 1500 of the NERC Rules of Procedure, and shall not be released publicly.

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ATTACHMENT 1

PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

FERC's regulations at 18 C.F.R §39.2(d) provide that each user, owner or operator of the Bulk Power System within the United States (other than Alaska and Hawaii) shall provide FERC, the ERO and the applicable Regional Entity such information as is necessary to implement section 215 of the Federal Power Act as determined by FERC and set out in the rules of the ERO and each Regional Entity. In order to enforce this requirement, if data, information, or other reports (including Mitigation Plans) requested from a Registered Entity in connection with a compliance monitoring process or enforcement process are not received by the Required Date, the Compliance Enforcement Authority may sequentially execute the following steps for each Reliability Standard Requirement for which the Compliance Enforcement Authority has requested data, information, or other reports. However, 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 Compliance Enforcement Authority may afford the Registered Entity reasonable additional time to submit the data, information or report 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. The Compliance Enforcement Authority however will afford the Registered Entity reasonable opportunity to resolve a difficulty submitting data due to time or format issues.

- Step 1: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's designated contact for reliability matters, identifying the data, information or report that were requested or required and the Required Date and stating that the Required Date has passed and the Registered Entity should, within five (5) business days, either provide the data, information or report, or contact the Compliance Enforcement Authority with a proposed date by which the Registered Entity will provide the data, information or report. If the Compliance Enforcement Authority agrees with the Registered Entity on a revised date by which the Registered Entity will provide the data, information or report, the agreed revised date shall become the Revised Required Date.
- ~~Step 2: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's vice president or equivalent responsible for compliance (with a copy to NERC and the Registered Entity's designated contact).~~
- ~~Step 3: If the Registered Entity does not provide a response to the notification in, and in accordance with, Step 1, within five (5) business days, or by a revised date as agreed to in Step 1, the Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's designated contact for reliability matters, with a copy to the Registered Entity's chief executive officer or equivalent, stating that if the data, information or report is not received within ten (10) business days, the~~

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Compliance Enforcement Authority may (i) implement a compliance monitoring process directed to the Registered Entity, or (ii) issue a Notice or other notification of Alleged Violation and Proposed Penalty or Sanction at the Severe Violation Severity Level to the Registered Entity for the Reliability Standard Requirement to which the requested or required data, information or report relates (with a copy to NERC, the Registered Entity's vice president or equivalent responsible for compliance and the Registered Entity's designated contact).

~~A full Compliance Audit may be scheduled at this step.~~

Step 43: If the Registered Entity fails to produce the requested or required data, information or report in response to the notification in Step 2 within the ~~Thirty (30)~~ten (10) business days cure period set forth in the Step 2 notification, the Compliance Enforcement Authority may take any action of which the Registered Entity was notified in the Step 2 notification, including issuing a Notice or other notification of Alleged Violation and Proposed Penalty or Sanction after the Required Date, a Reliability Standard violation may be applied at the sSevere Violation Severity Level for the Reliability Standard Requirement to which the requested or required data, information or report relates.

~~Step 4 does not apply to Compliance Audits and Mitigation Plan tracking requests.~~

The process described in this 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 (Steps 1 and 2 above) by the stated deadline. This 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 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 Compliance Enforcement Authority in good faith to respond to the request or requirement for data, information or reports, as modified if appropriate by the Compliance Enforcement Authority based on questions raised by the Registered Entity.

ATTACHMENT 2 - HEARING PROCEDURES

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ATTACHMENT 2 - HEARING PROCEDURES

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

- (a) The provisions set forth in this **Attachment 2** (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance Enforcement Authority in hearings in the United States conducted into:
- (1) whether Registered Entities within the Compliance Enforcement Authority’s Area of Responsibility have violated Reliability Standards, and
 - (2) if so, to determine the appropriate Mitigation Plans as well as any Remedial Action Directives, Penalties and/or sanctions in accordance with the NERC *Sanction Guidelines* and other applicable Penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2).
- (b) Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Officer and a Hearing Body established by the Compliance Enforcement Authority. Where the Hearing Body is comprised, in whole or in part, of industry stakeholders, the composition of the Hearing Body, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Body on any matter brought before it for decision. Where the Hearing Body is comprised solely of independent members and an independent hearing Officer, decisions shall require a majority vote.
- (c) The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a Penalty, opposing a Registered Entity’s Mitigation Plan, or requiring compliance with a Remedial Action Directive.
- (d) 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 Compliance Enforcement Authority have entered into a settlement agreement resolving the matters that are the subject of the hearing, the hearing shall be terminated by the Hearing Body and no further proceedings shall be conducted before the Hearing Body.

1.1.2 Deviation

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer, ~~as defined in Paragraph 1.1.5,~~ or the Hearing Body, for good cause shown, either upon the Hearing Officer’s or the Hearing Body’s own motion or upon the motion of any Participant.

1.1.3 Standards for Discretion

The Compliance Enforcement Authority's discretion under these Hearing Procedures shall be exercised to accomplish the following goals:

- (a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- (b) Fairness - Persons appearing in Compliance Enforcement Authority proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant's failure to act diligently and in good faith.
- (c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.
- (d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the Compliance Enforcement Authority's conflict of interest policy.
- (e) Impartiality - Persons appearing before the Hearing Body should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- (f) Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

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

1.1.5 Definitions

Unless otherwise defined, as used in these Hearing Procedures, definitions in Appendix 2 of the NERC Rules of Procedure shall apply. For ease of reference, the following defined terms used in these Hearing Procedures are also set forth below:

“Clerk” shall means an individual assigned by the Compliance Enforcement Authority to perform administrative tasks relating to the conduct of hearings and duties described in these Hearing Procedures.

“Compliance Enforcement Authority’s Area of Responsibility” means the Compliance Enforcement Authority’s Region. If a Regional Entity is the Compliance Enforcement Authority, the Compliance Enforcement Authority’s Area of Responsibility is shown in Exhibit A to the delegation agreement between the Regional Entity and NERC.

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

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

“Cyber Security Incident” means any malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk Power System.

“Director of Compliance” means the Director of Compliance of NERC or of the Compliance Enforcement Authority, as applicable, or other individual designated by the Compliance Enforcement Authority, who is responsible for the management and supervision of Compliance Staff, or his or her designee.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“ERO” ~~or means the~~ “Electric Reliability Organization;” means the organization that is certified by the Commission under Section 39.3 of its regulations, the purpose of which is to establish and enforce Reliability Standards for the Bulk Power System in the United States, subject to Commission review. The organization may also have received recognition by Applicable Governmental Authorities in Canada and Mexico to establish and enforce Reliability Standards for the Bulk Power Systems of the respective countries.

“Evidentiary Hearing” means a hearing at which one or more Participants submits evidence for the record. A Testimonial Hearing is an Evidentiary Hearing, but an

Evidentiary Hearing does not necessarily include the presentation of testimony by witnesses in person.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Body” means the body established or designated by the Compliance Enforcement Authority to conduct hearings and issue decisions concerning disputed compliance matters in accordance with these Hearing Procedures.

“Hearing Officer” means an individual employed or contracted by the Compliance Enforcement Authority and designated by the Compliance Enforcement Authority to preside over hearings conducted pursuant to these Hearing Procedures.

“Participant” means a Respondent and any other Person who is allowed or required by the Hearing Body or by FERC to participate as an intervenor in a proceeding conducted pursuant to these Hearing Procedures, and as used in these Hearing Procedures shall include the members of the Compliance Staff of the Compliance Enforcement Authority that participate in a proceeding.

“Penalty” means and includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity or Respondent to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s or Respondent’s violation and take into consideration any timely efforts made by the Registered Entity or Respondent to remedy the violation.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Respondent” means the Registered Entity who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive that is the basis for the proceeding, whichever is applicable.

“Staff” or “Compliance Staff” means individuals employed or contracted by NERC or the Compliance Enforcement Authority who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans.

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

“Testimonial Hearing” means an Evidentiary Hearing at which the witness or witnesses on behalf of one or more Participants appears in person to present testimony and be subject to cross-examination.

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

All filings made with the Hearing Body must contain:

- (a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;
- (b) A heading that describes the filing and the Participant on whose behalf the filing is made;
- (c) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;
- (d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record of the hearing, if available, or other [evidencedocuments](#); and
- (e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

1.2.2 Form of Filings

- (a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- (b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- (c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- (d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- (e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

1.2.3 Submission of Documents

(a) Where to File

Filings shall be made with the Clerk of the Compliance Enforcement Authority located at its principal office. The office will be open during the Compliance Enforcement Authority's regular business hours ~~from [Compliance Enforcement Authority business hours]~~ local time each day except Saturday, Sunday, legal holidays and any other day declared by the Compliance Enforcement Authority.

(b) When to File

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Body. Filings will be considered made when they are date stamped received by the Clerk. To be timely, filings must be received no later 5:00 P.M. ~~than [Compliance Enforcement Authority close of business]~~ local time on the date specified.

(c) How to File

Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made. Alternatively, filing by electronic means will be acceptable upon implementation of a suitable and secure system by the Compliance Enforcement Authority.

(d) Number of Copies to File

One original and five exact copies of any document shall be filed. The Clerk will provide each member of the Hearing Body with a copy of each filing.

(e) Signature

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff. ~~The signature on a filing constitutes a certificate that the signer has read the filing and knows its contents, and that the contents are true to the best of the signer's knowledge and belief.~~

(f) Verification

The facts alleged in a filing need not be verified unless required by these Hearing Procedures, the Hearing Officer or the Hearing Body. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be included in or attached to the verification explaining why a person other than the signer is providing verification.

(g) Certificate of Service

Filings shall be accompanied by a certificate of service stating the name of the individuals served, the Participants whose interests the served individuals represent, the date on which

service is made, the method of service and the addresses to which service is made. The certificate shall be executed by the individual who caused the service to be made.

1.2.4 Service

(a) Service List

For each proceeding, the Clerk shall prepare and maintain a list showing the name, address, telephone number, and facsimile number and email address, if available, of each individual designated for service. The Hearing Officer, Director of Compliance and the Registered Entity's [compliance contact designated agent for service](#) [as registered with the Compliance Enforcement Authority], shall automatically be included on the service list. Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the Clerk.

b) By Participants

[Subject to the provisions of Section 1.5.10](#), Any Participant filing a Document in a proceeding must serve a copy of the Document on each individual whose name is on the service list for the proceeding. Unless otherwise provided, service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

(c) By the Clerk

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

(d) Effective Date of Service

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

1.2.5 Computation of Time

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which the office of the Compliance Enforcement Authority is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the office of the Compliance Enforcement Authority is closed.

1.2.6 Extensions of Time

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

1.2.7 Amendments

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

1.2.8 Transcripts

(a) A full and complete record of all hearings, including any oral argument, shall be transcribed verbatim by a certified court reporter, except that the Hearing Officer may allow off-the-record discussion of any matter provided the Hearing Officer states the ruling on any such matter, and the Participants state their positions or agreement in relation thereto, on the record. The court reporter shall file a copy of each transcript with the Clerk. 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.

(b) Unless otherwise prescribed by the Hearing Officer, a Participant may file and serve suggested corrections to any portion of ~~the~~ transcript within fourteen (14)~~thirty-five (35)~~ days from the date of the Clerk's notice that the transcript has been filed with the Clerk~~on which the relevant portion of the transcript was taken~~, and any responses shall be filed within ten (10) days after service of the suggested corrections. The Hearing Officer shall determine what changes, if any, shall be made, and shall only allow changes that conform the transcript to the ~~truth~~statements being transcribed and ensure the accuracy of the record.

(c) The Compliance Enforcement Authority will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for Staff. Any other Participant shall pay for its own copy of the transcript if it chooses to obtain one and,

should any Participant seek to obtain a copy of the transcript on an expedited basis, it shall pay for the expedited transcription services.

1.2.9 Rulings, Notices, Orders and Other Issuances

Any action taken by the Hearing Officer or the Hearing Body shall be recorded in a ruling, notice, order or other applicable issuance, or stated on the record for recordation in the transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the Hearing Body. All notices of hearings shall set forth the date, time and place of hearing.

1.2.10 Location of Hearings and Conferences

All hearings and oral arguments shall be held at the principal office of the Compliance Enforcement Authority unless the Hearing Officer or Hearing Body designates a different location.

1.2.11 Participant Participation

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer and, in the event of oral argument, the Hearing Body, except ~~that as witnesses shall personally appear at the evidentiary hearing if~~ required by ParagraphSection 1.6.6. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

1.2.12 Interventions ~~Are Not Permitted~~

(a) The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by the Hearing Body or by FERC, no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

(b) 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, or Remedial Action Directive that is the subject of the proceeding. Examples of a direct and substantial interest in the outcome shall include

(1) that the Person seeking intervention has received a Notice of Alleged Violation or a Remedial Action Directive involving the same Reliability Standard requirement(s) and arising out of the same event or occurrence as the existing Respondent(s) that is the subject of the proceeding, or

(2) 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, provided, that after the Person seeking intervention sufficiently demonstrates it will or may be contractually or legally liable for payment of all or a portion of the proposed Penalty or sanction to be granted intervention, the Person granted intervention and the existing Respondents will not be allowed to litigate in the proceeding whether the Person granted intervention is contractually or legally liable for payment of all

or a portion of the proposed Penalty or sanction or the amount of the proposed Penalty or Sanction for which the Person granted intervention is or may be liable.

That the Person seeking intervention has received a Notice of Alleged Violation for the same Reliability Standard Requirement(s) as the original Respondent(s) but arising out of a different event or occurrence; or seeks to intervene to advocate an interpretation of the Reliability Standard Requirement(s) or provision(s) of the *Sanction Guidelines*, that are at issue in the proceeding, without more, shall not constitute a direct and substantial interest in the outcome and shall not be grounds on which the Hearing Body may allow the Person to intervene.

(c) A Person seeking intervention shall do so by filing a motion to intervene with the Clerk. The motion shall state the Person's interest in sufficient factual detail to demonstrate that the Person should be allowed to intervene pursuant to Section 1.2.12(b). The motion to intervene shall also state the Person's agreement to maintain the confidential and non-public nature of the hearing, including all pleadings and other Documents filed or exchanged in connection with the request for intervention. Any facts alleged in, or offers of proof made in, the motion to intervene shall be supported by affidavit or verification.

(d) The Clerk shall promptly provide copies of the motion to intervene to the Hearing Officer and the Participants. The Hearing Officer shall promptly set a time period, not to exceed seven (7) days, within which the Participants may file responses to the motion to intervene. Within seven (7) days following the end of the response period, the Hearing Officer shall issue a recommendation to the Hearing Body as to whether or not the motion to intervene should be granted.

(e) The Hearing Body may, within seven (7) days following the date of the Hearing Officer's recommendation, issue a decision granting or denying the motion to intervene. If the Hearing Body does not issue a decision granting or denying the motion to intervene within seven (7) days following the date of the Hearing Officer's recommendation, the Hearing Officer's recommendation shall become the decision of the Hearing Body and the motion to intervene shall be deemed granted or denied by the Hearing Body in accordance with the Hearing Officer's recommendation.

(f) The Hearing Officer, on motion of a Participant or on his or her own motion, or the Hearing Body, on recommendation by the Hearing Officer or its own motion, may stay or suspend the proceeding while a request to intervene, including a request to intervene filed directly with FERC, and including any appeal of the grant or denial of the request to intervene, is being resolved.

(g) A Person allowed to intervene and become a Participant to a proceeding shall be designated as a Respondent and deemed to be aligned with the existing Respondent(s), unless the Hearing Body, in the decision granting intervention, states that the Person allowed to intervene shall be deemed to be aligned with another Participant to the proceeding.

(h) A Person allowed to intervene and become a Participant to a proceeding is required to take the record and the procedural status of the proceeding as it stands on the date the Person's motion to intervene is granted by the Hearing Body.

(i) A Person may appeal a decision of the Hearing Body denying the Person's motion to intervene, and the Compliance Staff, the Respondent or any other Participant may appeal a decision granting or denying a motion to intervene, in accordance with Section 414 of the NERC Rules of Procedure. A notice of appeal shall be filed with the NERC director of enforcement no later than seven (7) days following the date of the decision of the Hearing Body granting or denying the motion to intervene.

1.2.13 Proceedings Closed to the Public

No hearing, oral argument or meeting of the Hearing Body shall be open to the public, and no notice, ruling, order or any other issuance of the Hearing Officer or Hearing Body, or any transcript, made in any proceeding shall be publicly released unless the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) determine that public release is appropriate. Only the members of the Hearing Body, the Participants, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding.

1.2.14 Docketing System

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the filing of a request for a hearing~~issuance of a Notice of Alleged Violation~~. Unless NERC provides a different docketing system that will be used uniformly by the Compliance Enforcement Authorities, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "[RE]", followed by a dash ("-"), followed by a four digit number that will be "0001" on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

1.2.15 Representations Deemed to be Made in All Pleadings

A Participant presenting any pleading to the Hearing Officer or Hearing Body shall be deemed to certify that to the best of the Participant's knowledge, information and belief, formed after and based on an inquiry that is reasonable under the circumstances:

- (a) the factual allegations set forth in the pleading have or will have support in the evidence or the Participant believes they will have support in the evidence after reasonable opportunity for further investigation or discovery;
- (b) the denials in the pleading of factual allegations made by another Participant are warranted by or will be warranted by the evidence or, if specifically so identified, are reasonably based on belief or on a lack of information;
- (c) the claims, defenses and other contentions set forth in the pleading are warranted based on the applicable Reliability Standard Requirement(s) or Rules of Procedure provisions; and

(d) the pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the hearing or the cost incurred by any Participant.

1.2.165 Hold Harmless

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the Compliance Enforcement Authority, including without limitation its members, board of directors or trustees, compliance committee, any other committees or subcommittees, Staff, contracted employees, Hearing Body members, Hearing Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This “hold harmless” provision does not extend to matters constituting gross negligence, intentional misconduct or breach of confidentiality.

1.3 Initiation of the Hearing Process

1.3.1 Registered Entity’s Option to Request a Hearing

(a) Except when contesting a Remedial Action Directive pursuant to ~~s~~Section 1.9 of these Hearing Procedures, a Registered Entity may file a statement, in accordance with Section 1.3.1(e), with the Compliance Enforcement Authority requesting a hearing if either:

- (a1) The Registered Entity files a response to a Notice of Alleged Violation that contests either the Alleged Violation, the proposed Penalty, or both; or
- (b2) The Compliance Staff submits to the Registered Entity a statement rejecting the Registered Entity’s proposed revised Mitigation Plan submitted after Compliance Staff rejected the Registered Entity’s initial proposed Mitigation Plan.

(b) A Registered Entity must file its hearing request within forty (40) days after

- (i1) the Registered Entity files its response to the Notice of Alleged Violation; or
- (2) ~~(ii)~~ the Compliance Staff submits to the Registered Entity its statement identifying a disagreement with the Registered Entity’s proposed Mitigation Plan, whichever is applicable.

(c) If the Registered Entity does not file a hearing request within the time period set forth in this ~~Section Paragraph~~, then the Registered Entity will be deemed to have agreed and waived any objection to the proposed Penalty, the Alleged Violation or the Compliance Staff’s rejection of the revised Mitigation Plan, whichever is applicable.

(d) In accordance with Section 5.3 of the Compliance Program, ~~Either~~ a Notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its rejection of a Registered Entity’s proposed revised Mitigation Plan shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff’s rejection of the proposed revised Mitigation Plan, using either the shortened hearing

procedure pursuant to ~~Section 1.3.4~~~~Paragraph 1.3.2~~ or the general~~full~~ hearing procedure described in Sections 1.4 to 1.7. ~~If the Registered Entity files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity (or any Respondent if there are more than one Respondent) requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity (or all Respondents if there are more than one Respondent) requests the shortened hearing procedure, Compliance Staff and any other Participant shall submit a filing within five (5) days of the Registered Entity's hearing request that states whether Staff or such other Participant agrees to use the shortened hearing procedure. If Staff or another Participant makes a filing requesting the full hearing procedure, then the full hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity or Entities shall be used. Once either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.~~

(e) The Registered Entity's statement requesting a hearing shall:

- (1) contain a plain and concise statement of the facts and arguments supporting the Registered Entity's position, as applicable, that it did not violate the Reliability Standard Requirement(s) set forth in the Notice of Alleged Violation, that the proposed Penalty or sanction is too high and should be reduced, or that the Registered Entity's proposed Mitigation Plan should be approved;
- (2) state the relief that the Registered Entity requests the Hearing Body to grant; and
- (3) state whether the Registered Entity requests the shortened hearing procedure or the general hearing procedure.

The Registered Entity's statement may set forth two or more alternative grounds on which the Registered Entity bases its position, as applicable, that it did not violate the Reliability Standard Requirement(s) set forth in the Notice of Alleged Violation, that the proposed Penalty or sanction is too high and should be reduced, or that the Registered Entity's proposed Mitigation Plan should be approved.

(f) If the Registered Entity (or any Respondent if there are more than one Respondent) requests the general hearing procedure, the general hearing procedure shall apply. If the Registered Entity (or all Respondents if there are more than one Respondent) requests the shortened hearing procedure, Compliance Staff and any other Participants shall submit a filing within five (5) days of the Registered Entity's hearing request that states whether Staff or such other Participant agrees to use the shortened hearing procedure. If Staff or another Participant makes a filing requesting the general hearing procedure, then the general hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity or Entities shall be used. Once either the general or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

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

- (a1) The Registered Entity's Self-Reporting of a violation;
- (b2) The Notice of Alleged Violation and the Registered Entity's response thereto; and/or
- (e3) The Registered Entity's proposed revised Mitigation Plan and the Compliance Staff's statement rejecting the proposed revised Mitigation Plan.

1.3.2 Compliance Staff's Response to Request for Hearing

(a) If the Registered Entity's request for hearing requests that the shortened hearing procedure be used, the Compliance Staff shall file a response stating whether it agrees to the use of the shortened hearing procedure.

(b) If the Registered Entity's request for hearing requests that the Registered Entity's proposed revised Mitigation Plan should be approved, the Compliance Staff shall file a response stating the Compliance Staff's position as to why the Registered Entity's proposed revised Mitigation Plan should not be approved and setting forth any additional terms that the Compliance Staff believes should be included in the Mitigation Plan.

(c) If the Registered Entity's request for hearing does not request that the shortened hearing procedure be used and does not request that the Registered Entity's proposed revised Mitigation Plan should be approved, the Compliance Staff may, but is not required to, file a response stating, as applicable, the basis for the Compliance Staff's position that the Registered Entity violated the Reliability Standard Requirement(s) specified in the Notice of Alleged Violation or that the proposed Penalty or sanction is appropriate under the *Sanction Guidelines* and should not be reduced.

(d) Any response by the Compliance Staff required or permitted by this Section shall be filed within fifteen (15) days after the date the request for hearing was filed, unless the Hearing Officer or Hearing Body allows a longer time to file the response.

1.3.3 Notice of Hearing

(a) The Clerk shall issue a notice of hearing not less than sixteen (16) days, and not more than twenty-one (21) days, after the Registered Entity files its request for hearing.

(b) The notice of hearing shall state whether the shortened hearing procedure or the general hearing procedure will be used.

(c) The notice of hearing shall identify the Hearing Officer and the date, time and place for the initial prehearing conference.

- (1) If the shortened hearing procedure is to be used, the initial prehearing conference shall be set for a date within seven (7) days following the date of the notice of hearing.

- (2) If the general hearing procedure is to be used, the initial prehearing conference shall be set for a date within fourteen (14) days following the date of the notice of hearing.

1.3.42 Shortened Hearing Procedure

The shortened hearing procedure shall be as set forth in this SectionParagraph. The rules applicable to the generalfull hearing procedure shall apply to the shortened hearing procedure unless the context of such a rule is inconsistent with the procedure set forth in this SectionParagraph or otherwise renders it inapplicable to the shortened hearing procedure. The rules concerning ex parte communications in SectionParagraph 1.4.7 are hereby expressly made applicable to the shortened hearing procedure under this SectionParagraph.

The Hearing Body shallmay utilize a Hearing Officer to preside over the shortened hearing procedure in accordance with SectionParagraph 1.4.2. But, no evidentiaryTestimonial hHearing will be held in the shortened hearing procedure and the Participants will not present witness testimony or file briefs, except that briefs on exceptions and briefs in reply to exceptions may be allowed pursuant to Subparagraphsubsection (g). Instead, the following events shall take place within the following periods:

- (a) The initial prehearing conference shall be held within seven (7) days after the date on which the notice of hearing is issued. In addition to any other matters set forth in ParagraphSection 1.5.2 that may apply, the initial prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphssubsections (c) through (e).
- (b) Within five (5)ten (10) days after the date on which the notice of hearing is issued, Staff shall make Documents available to the Registered Entity for inspection and copying pursuant to SectionParagraph 1.5.7.
- (c) Within twenty-one (21) days after the initial prehearing conference, the Staff shall file:
 - (1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
 - (2) all Documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - (3) a verification attesting to the truthfulness of the facts alleged in the filing.
- (d) Within fourteen (14) days of Staff's initial comment filing pursuant to Subparagraphsubsection (c), the Registered Entity shall file:
 - (1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;

- (2) all Documents that the Registered Entity seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - (3) a verification attesting to the truthfulness of the facts alleged in the filing.
- (e) Within seven (7) days after the Registered Entity’s responsive comment filing pursuant to [Subparagraph subsection](#) (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity’s responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional Documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional Documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional Documents in support of its position that are responsive to the additional Documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.
- (f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days after the Staff’s reply comments filing or any additional filing by the Registered Entity pursuant to [Subparagraph subsection](#) (e).
- (g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days after the Hearing Officer’s initial opinion, exceptions to the Hearing Officer’s initial opinion in a brief designated “brief on exceptions” in accordance with [Paragraph Section](#) 1.7.5 and within seven (7) days thereafter, a reply brief designated “brief in reply to exceptions.”
- (h) The Hearing Body shall strive, but is not required, to issue a final order within ~~ninety (90)~~ [one hundred twenty \(120\)](#) days of the notice of hearing.

The Hearing Officer or Hearing Body may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Body to issue the final order within ~~ninety (90)~~ [one hundred twenty \(120\)](#) days of the notice of hearing.

1.4 General Hearing Procedure

1.4.1 ~~Notice of Hearing~~ [\[Intentionally Left Blank\]](#)

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

1.4.2 Hearing Officer

(a) The Compliance Enforcement Authority ~~shall~~ [may](#) utilize a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing

Officer's actions shall be subject to the authority of the Hearing Body as set forth in SectionParagraph 1.4.3. Members of the Hearing Body may attend any aspect of the hearing.

(b) ~~The Hearing Body may delegate to the~~ Hearing Officer is responsible for authority over the conduct of the hearing, including administering the hearing from the initial prehearing conference through the issuance of the Hearing Officer's initial opinion, ~~and~~ any administrative hearing functions thereafter, and ~~the responsibility for~~ submission of the matter to the Hearing Body for final decision through the presentation to the Hearing Body of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- (1) To administer oaths and affirmations;
- (2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- (3) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- (4) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- (5) To supervise and issue orders concerning discovery;
- (6) To conduct prehearing conferences, status hearings and ~~e~~Evidentiary ~~h~~Hearings;
- (7) To hear argument on all objections, motions and other requests, and to rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- (8) To rule on and receive evidence;
- (9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- (10) To issue protective orders pursuant to SectionParagraph 1.5.10;
- (11) To issue initial opinions; and
- (12) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

(c) ~~If the Hearing Body uses a Hearing Officer to preside over a hearing, the Hearing Body~~ The Compliance Enforcement Authority shall disclose the ~~identity,~~ employment history and

professional affiliations of the Hearing Officer within two (2) days of the Hearing Officer's assignment to the proceeding, and Participants to the hearing may raise objections to the Hearing Officer's participation in accordance with [SectionParagraph 1.4.5](#).

1.4.3 Hearing Body

(a) 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 on any matter brought before it for decision.

(b) The Hearing Body is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:

- (1) 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. Any member of the Hearing Body may request of, and shall receive from, the Clerk, a copy of any filing by a Participant, shall receive all filings in a hearing, including but not limited to all issuances of the Hearing Officer, all motions and responses thereto, and all written comments, testimony and evidence. The Hearing Body shall not receive Documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such Documents are placed into the record pursuant to [SectionParagraph 1.6.7](#).
- (2) The Clerk shall send all issuances of the Hearing Officer to the members of the Hearing Body.
- (23) The Hearing Body or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or eEvidentiary hHearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing. At any prehearing conference or hearing attended by a member of the Hearing Body, any member of the Hearing Body may ask questions directly of any Participant or witness.
- (34) The Hearing Body shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-eEvidentiary hHearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the Hearing Body shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
- (45) To the extent that the Hearing Body disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review meeting the requirements of [SectionParagraph 1.4.4](#), reverse or modify the

issuance or ruling in whole or in part, or take any other action as may be appropriate.

- (56) The Hearing Body shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the Hearing Body shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

1.4.4 Interlocutory Review

(a) A Participant shall be allowed to seek interlocutory review by the Hearing Body of any ruling of the Hearing Officer where the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding. Failure to seek such review shall not operate as a waiver of any objection to such ruling.

(b) Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the Hearing Body, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The petition shall be filed with any offer of proof and supported by references to the record, or by affidavit if based on facts that do not appear in the record. Responses to petitions for interlocutory review shall be filed within seven (7) days after service of the petition. No replies to responses shall be allowed.

(c) The Hearing Officer shall file a report to the Hearing Body within fourteen (14) days from the filing of the petition. The Hearing Officer's report shall set forth the relevant facts and other background information relating to the ruling on which interlocutory review is sought, the basis for the Hearing Officer's ruling, a summary of the Participants' arguments on the petition for interlocutory review, and the recommendation of the Hearing Officer for the disposition of the petition by the Hearing Body.

(d) On review of a Hearing Officer's ruling, the Hearing Body may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. The Hearing Body may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments.

(e) Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in SectionParagraph 1.7.8) of the Hearing Body, and (ii) majority vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the Hearing Body's action taken on interlocutory review shall not be allowed. Filing and disposition of a petition for interlocutory review of a ruling of the Hearing Officer shall not suspend or otherwise delay a hearing or any

other scheduled dates in the proceeding except as authorized by the Hearing Officer or the Hearing Body based on a finding of exceptional circumstances.

(f) A non-Participant that has been ordered by the Hearing Officer pursuant to [Section paragraph 1.5.8](#) to produce or provide Documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the Hearing Body of the Hearing Officer's order, with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to [Section paragraph 1.5.8](#), and (ii) the reasonableness of the Hearing Officer's order to produce or provide Documents, information or testimony.

1.4.5 Disqualification

(a) A Hearing Officer, Technical Advisor or member of the Hearing Body shall recuse himself or herself from a proceeding if participation would violate the Compliance Enforcement Authority's applicable conflict of interest policy.

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

(c) The Hearing Officer shall issue a proposed ruling for the Hearing Body's consideration upon the filing of a motion for disqualification unless the Hearing Officer is the subject of the motion. The Hearing Body, without the participation of any member who is the subject of the motion, shall issue a final ruling on the motion. If the Hearing Officer [recuses himself or herself](#) or is ~~recused or~~ disqualified, the Hearing Body will appoint a replacement Hearing Officer. To ensure fairness to the Participants and expedite completion of the proceeding when a replacement Hearing Officer is appointed after a hearing has commenced, the replacement Hearing Officer may recall any witness or may [take other steps necessary to ensure](#) ~~certify~~ familiarity with any part or all of the record.

(d) If a quorum (as defined in [Section Paragraph 1.7.8](#)) of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, then the Compliance Enforcement Authority shall appoint [at least the number of](#) new member(s) to the Hearing Body [necessary](#) to create a quorum, ~~which~~ [The](#) new member(s) shall serve on the Hearing Body through the conclusion of the proceeding but not thereafter. ~~The Compliance Enforcement Authority shall only appoint the number of new members as are necessary to create a quorum.~~ Any new member of the Hearing Body shall be subject to the provisions applicable herein to all Hearing Body members.

1.4.6 Technical Advisor

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

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

1.4.7 No Ex Parte Communications

(a) Once a Registered Entity requests a hearing pursuant to [SectionParagraph 1.3.1](#):

(1) neither the Hearing Body, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that

(2) the Hearing Body, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:

(A) in writing if the writing is simultaneously provided to all Participants; or

(B) orally if a representative for every Participant is present in person or by telephone;

(C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.

(b) [Exceptions](#)

(1) The proscription in [Subparagraphsubsection \(a\)\(1\)](#) does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof on any topic, provided that any member of the Compliance Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.

(e2) The proscription in [Subparagraphsubsection \(a\)\(1\)](#) ~~also~~ does not prohibit communications between [or among](#) members of the Hearing Body, the Hearing Officer and any Technical Advisor.

(3) The proscription in subsection (a)(1) does not prohibit 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 and other procedural matters relating to the proceeding.

(4) The proscription in subsection (a)(1) does not prohibit communications between or among the Clerk, the Hearing Body and representatives of the Compliance Enforcement Authority for purposes of establishing the hearing forum.

(~~d~~c) Any member of the Hearing Body, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly ~~allow causes to be made~~ a communication prohibited by this ~~Section Paragraph~~ shall, within seven (7) days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each Person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

1.4.8 Appearances

(a) Participants shall file written appearances within seven (7) days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

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

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

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

(d) Individuals representing Participants in any hearing also shall enter their appearances at the beginning of the hearing by stating their names, addresses, telephone numbers and email addresses orally on the record.

1.4.9 Failure to Appear or Exercise Diligence

The failure of any Participant to appear during any hearing without good cause and without notification may be grounds for dismissal or deciding against the interests of such Participant.

1.4.10 Consolidation of Proceedings

(a) In the event that more than one Registered Entity receives a Notice of Alleged Violation for the same event or ~~occurrence~~~~transaction~~, and each Registered Entity selects the ~~full~~~~general~~ hearing procedure described in Sections 1.4 to 1.7, the Hearing Body on its own motion ~~or on motion of a Participant~~ may exercise its discretion to examine the actions of all ~~such~~ Registered Entities in a single proceeding as long as an initial opinion has not been rendered by the Hearing Officer pursuant to Section 1.7.4 in any proceeding to be consolidated.

(b) A Participant may file a motion ~~pursuant to Paragraph 1.5.5~~ to consolidate into a single proceeding Alleged Violations of different Reliability Standards against a single Respondent, and related contests of Penalties or Mitigation Plans, arising out of the same event or ~~occurrence~~~~transaction~~. Such consolidation may be allowed in the discretion of the Hearing Officer or Hearing Body, as applicable.

1.5 Prehearing Procedure

1.5.1 [Intentionally left blank]

1.5.2 Prehearing Conference

(a) ~~The Hearing Officer shall hold at least one~~~~The purpose of the~~ prehearing conference, ~~which may be the initial prehearing conference or a subsequently scheduled prehearing conference, for the following purposes shall be to:~~

- (1) Preliminarily identify the issues ~~and discuss the anticipated form of the hearing~~;
- (2) Discuss a schedule for any discovery to be conducted and address any discovery issues that are raised at that time;
- (3) Explore the possibility of obtaining admissions of fact and of the ~~genuineness~~~~authenticity~~ of Documents that would avoid unnecessary proof;
- (4) Develop a schedule for the preparation and submission of evidence and witness testimony, ~~including the disclosure of witnesses and exhibits and whether the use of pre-filed testimony may not be appropriate~~, in advance of the ~~e~~Evidentiary ~~h~~Hearing;
- (5) ~~Develop a schedule or schedules for any anticipated motions~~;
- (56) Schedule a date(s) for the ~~e~~Evidentiary ~~h~~Hearing, ~~which shall be within ninety (90) days of the prehearing conference described in this subsection, unless a different date or dates is specified by the Hearing Officer or the Hearing Body and with the consent of all Participants or for good cause shown~~; and

~~(67)~~ Address such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

(b) The Hearing Officer shall also hold a final prehearing conference prior to the Evidentiary Hearing, for the purpose of discussing:

- (1) the anticipated duration of the hearing;
- (2) the scheduling of witnesses' appearances to testify;
- (3) the issues anticipated to be presented at the hearing;
- (4) whether prehearing memoranda should be filed and if so, the schedule; and
- (5) any other matters identified by the Hearing Officer for the management of the Evidentiary Hearing.

Participants may submit to the Hearing Officer, at least ten (10) days prior to the scheduled date of the final prehearing conference, a proposed list or lists of matters to be discussed at the final prehearing conference.

1.5.3 Summary Disposition

(a) Availability

A Hearing Officer, on the Hearing Officer's own motion or on the motion of a Participant, may issue an initial opinion granting, in whole or in part, summary disposition if it appears that there are no issues of material fact and a Participant is entitled to issuance of a final order in its favor. ~~If the Hearing Officer is considering summary disposition in the absence of a Participant motion, the Hearing Officer shall request the Participants to identify in writing any issues of material fact and to comment on the proposed disposition. Factual information in the Participants' comments shall be supported by affidavit. Following review of the Participants' comments, if it still appears to the Hearing Officer that there are no genuine issues of material fact, the Hearing Officer may proceed without an evidentiary hearing. The Hearing Officer shall, however, allow the Participants the opportunity to file briefs.~~

(b) Motion for Summary Disposition and Responses

- (1) A Participant moving for summary disposition must clearly identify the material facts that are not in dispute, demonstrate that there are no other material facts in dispute, and demonstrate that on the basis of the undisputed material facts, the Participant is entitled to issuance of a final order in its favor.
- (2) A Participant opposing a motion for summary disposition must clearly identify in its response to the motion the material facts that the Participant contends remain in dispute, and/or explain why the moving Participant is not entitled to issuance of a final order in its favor even though there are no disputed issues of material fact.

(c) Summary Disposition on the Hearing Officer's Own Motion

If the Hearing Officer is considering summary disposition in the absence of a Participant motion, the Hearing Officer shall request the Participants to identify in writing any issues of material fact and to comment on the proposed disposition. Factual information in the Participants' comments shall be supported by affidavit. Following review of the Participants' comments, if it still appears to the Hearing Officer that there are no genuine issues of material fact, the Hearing Officer may proceed without an Evidentiary Hearing. The Hearing Officer shall, however, allow the Participants the opportunity to file briefs.

(d) Hearing Officer's Initial Opinion Granting Summary Disposition

When the Hearing Officer issues an initial opinion granting ~~a motion for~~ summary disposition in whole or in part, the ruling shall set forth the rationale for the grant. An initial opinion of the Hearing Officer granting summary disposition shall be confirmed, rejected or modified in a final order issued by the Hearing Body.

1.5.4 Status Hearings

Any Participant may request, and the Hearing Officer may call, a status hearing at any time subsequent to the initial prehearing conference to address issues that have arisen between the Participants or other matters relevant to the conduct of the hearing. Such issues may include, but are not limited to, discovery disputes and scheduling matters. 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. The Hearing Officer shall direct the Clerk to issue a notice of status hearing that sets forth the date, time and place for the hearing, and identifies the matters to be addressed at the hearing.

1.5.5 Motions and Responses

(a) Unless otherwise provided in these Hearing Procedures or by the procedural schedule established by the Hearing Officer or Hearing Body, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless ~~at~~ the Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit.

(b) Unless otherwise specified by the Hearing Officer or Hearing Body, responses to motions shall be filed within fourteen (14) days after service of the motion, and replies to responses shall be filed within seven (7) days after service of the responses; ~~however, a~~ A Hearing Officer or Hearing Body may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer or Hearing Body, the filing of a motion does not stay the proceeding or extend any scheduled dates in the proceeding.

1.5.6 Experts

(a) A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign an agreement evidencing the expert's understanding and acknowledgement of the non-public nature of the proceeding and that unauthorized public

disclosure of information obtained in connection with the expert's participation in the proceeding is prohibited.

(b) The Participant employing the expert shall propose the agreement for approval ~~by~~ via a motion, and its approval shall be subject, in addition to consideration of any objections by other Participants, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.

1.5.7 Inspection and Copying of Documents in Possession of Staff

(a) Documents to be Available for Inspection and Copying

(1) Within ~~twenty-five (25)~~ days after ~~the date the issuance of the notice of request for hearing is filed~~, Staff shall make available for inspection and copying by the ~~Respondent~~ other Participants, all Documents prepared or obtained by Staff through or in connection with any compliance monitoring process(es) that led to the institution of proceedings. Such Documents shall include but are not limited to:

(A) requests for information to the Respondent;

(B) every written request, including e-mail, directed to persons not employed by the Compliance Enforcement Authority to provide information or Documents or to be interviewed;

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

(D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;

(E) all other Documents obtained from the Respondent; and

(F) all other Documents obtained from persons not employed by the Compliance Enforcement Authority.

The sole ~~grounds on~~ ~~bases pursuant to~~ which Staff ~~is~~ shall be authorized to withhold Documents from inspection and copying ~~are~~ shall be the bases set forth in ~~subsection~~ Paragraph 1.5.7(b); provided, however, that the Documents made available for inspection and copying need not include (i) exact copies of Documents the Respondent previously provided to Staff, and (ii) any Documents provided to the Respondent with or as part of the Notice of Alleged Violation, Notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

(2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or Hearing Body shall oversee the Staff's designation of Documents to be produced to such other Participants and

the development, execution and enforcement of any protective order deemed necessary.

(3) ___ Staff shall promptly inform the Hearing Officer and each other ~~Participant~~Respondent if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives Documents pursuant to a request for information after Staff has made Documents ~~have been made~~ available ~~to a Respondent~~ for inspection and copying as set forth in ~~subsection~~Subparagraph (a)(1), the additional Documents shall be made available to the ~~Participants~~Respondent not later than fourteen (14) days after Staff receives such Documents. If a date for the ~~e~~E~~videntiary~~ ~~h~~Hearing has been scheduled, Staff shall make the additional Documents available to the ~~other~~ ~~Participants~~Respondent not less than ten (10) days before the ~~Evidentiary~~ ~~h~~Hearing. If Staff receives such Documents ten or fewer days before the ~~Evidentiary~~ ~~h~~Hearing is scheduled to begin or after the ~~Evidentiary~~ ~~h~~Hearing begins, Staff shall make the additional Documents available immediately to the ~~Respondent~~other Participants.

(4) ___ Nothing in ~~subsection~~paragraph (a)(1) shall limit the discretion of the Compliance Enforcement Authority to make any other Document available to the ~~Participants~~Respondent or the authority of the Hearing Officer to order the production of any other Documents or information by any Participant.

(b) ___ Documents That May Be Withheld by Staff

(1) ___ Staff may withhold a Document from inspection and copying by ~~a Participant~~the Respondent if:

(A) the Document is privileged to ~~the Compliance Enforcement Authority~~Staff or constitutes attorney work product of ~~Staff's~~ counsel for the Compliance Enforcement Authority (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent or other Participant);

(B) ___ the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that ~~shall~~will not be offered in evidence or otherwise relied on by Staff in the hearing;

(C) ___-the Document would disclose

(i) ___ an examination, investigatory or enforcement technique or guideline not otherwise made public of the Compliance Enforcement Authority, a federal, state, or foreign regulatory authority, or a self-regulatory organization;

(ii) ___ the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization, that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or

(iii) ___ an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, the Compliance Enforcement Authority, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

(D) ___ the Hearing Officer grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

Provided, that where a Document contains information of the type listed in subsectionsSubparagraphs (A), (B), (C) or (D) that is capable of being redacted, Staff shall make the Document available for inspection and copying by the other ParticipantsRespondent in redacted form.

(2) ___ Nothing in subsectionsSubparagraph (b)(1)(B), (C) or (D) authorizes Staff to withhold a Document, or a part thereof, that contains exculpatory evidence. Nothing in subsectionSubparagraph (b)(1) requires Staff to withhold a Document from disclosure.

(c) ___ Withheld Document List

At the time it is required to make Documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which Documents are being made available, a list of Documents withheld by Staff pursuant to subsectionSubparagraph (b)(1), with a statement of the grounds that support withholding the Document. Upon review, for good cause shown, the Hearing Officer may order Staff to make any Document withheld, other than a Document that is subject to the attorney-client privilege, available to the Respondent(s)other Participants for inspection and copying.

(d) ___ Timing of Inspection and Copying

Except as set forth in this SectionParagraph, the Hearing Officer shall determine the schedule of production of Documents for inspection and copying, provided that the Hearing Officer may modify any time period for production set forth in this SectionParagraph as warranted by the circumstances.

(e) ___ Place and Time of Inspection and Copying

Documents subject to inspection and copying pursuant to this [ParagraphSection](#) shall be made available to the Respondent [and other Participants](#) for inspection and copying at the Compliance Enforcement Authority office where the Documents are ordinarily maintained, or at such other office as the Hearing Officer, in his or her discretion, shall designate, or as the Participants otherwise agree. A [ParticipantRespondent](#) shall be given access to the Documents at the Compliance Enforcement Authority's offices during normal business hours. A [ParticipantRespondent](#) shall not be given custody of the Documents or be permitted to remove the Documents from the Compliance Enforcement Authority's offices, [other than copies of Documents made available by the Compliance Enforcement Authority for that purpose](#).

(f) Copying Costs

A [ParticipantRespondent](#) may obtain a photocopy of all Documents made available for inspection. A [ParticipantRespondent](#) shall be responsible for the cost of photocopying. Unless otherwise ordered by the Hearing Officer, charges for copies made at the request of a [ParticipantRespondent](#) shall be at a rate to be established by the Compliance Enforcement Authority.

(g) Failure to Make Documents Available — Harmless Error

In the event that a Document required to be made available to a [ParticipantRespondent](#) pursuant to this [SectionParagraph](#) is not made available by Staff, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to make the Document available was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff to produce a Document, the burden shall be on Staff to show that such failure was harmless error. The Hearing Officer, or, upon review, the Hearing Body shall determine whether the failure to make the Document available was harmless error.

1.5.8 Other Discovery Procedures

(a) In addition to the production of Documents by Staff for inspection and copying by Respondent [and other Participants](#) pursuant to [SectionParagraph](#) 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 409 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.409, including data requests, written interrogatories and requests for production of Documents or things, depositions by oral examination, requests for inspection of Documents and other property, requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce Documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing.

(b) Unless otherwise directed by the Hearing Officer or Hearing Body upon motion by a Participant, or by the Hearing Officer, or by the Hearing Body on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.410 and 385.510(e), which are hereby

incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- ~~(a)~~(1) The provisions of ~~subsections~~Subparagraphs (d), (e) and (f) of ~~Section~~Paragraph 1.5.7 shall apply to any such discovery.
- ~~(b)~~(2) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(~~bd~~)(2)) shall not be applicable.
- ~~(e)~~(3) The Hearing Officer and the Hearing Body have the authority to issue orders to compel the appearance by or production of Documents or information by, only a Person that (i) is a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the Hearing Body do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide Documents, information or testimony.
- ~~(d)~~(4) References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide Documents, information or testimony.
- ~~(e)~~(5) References to the “Commission” in Rules 402 through 410 and 510(e) shall be to FERC except as follows:

 - ~~(i)~~ (i) the references in Rules 402(a), 404(b)(1) and 405(b), the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the Hearing Body,
 - (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and
 - (iii) the reference in Rule 510(e)(3) shall be deemed to be to the Hearing Officer or Hearing Body.
- ~~(f)~~(6) Unless otherwise ordered by the Hearing Officer or Hearing Body, a data request, set of interrogatories, request for production of Documents or things, request for inspection of Documents or other property, request for admissions, or order to produce or provide Documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or date of the order.
- ~~(g)~~(7) A list of withheld Documents, if any, shall be provided by any Participant required to produce Documents, at the time the Documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the Documents. Upon review, for good cause shown, the Hearing Officer may order the Participant to make any Document withheld available to any other Participant or Participants for inspection and copying.

~~(h)~~(8) In the event a Document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the Document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a Document or information, the burden shall be on the Participant that failed to produce or provide the Document or information to show that such failure was harmless error. The Hearing Officer or, upon review, the Hearing Body shall determine whether the failure to make the Document available was harmless error.

~~(i)~~(9) Unless otherwise ordered by the Hearing Officer or Hearing Body, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date ~~of the~~ request for hearing was filed~~initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.~~

~~(j)~~(10) Notwithstanding ~~(f)~~subsections (b)(6) and ~~(i)~~(b)(9), however, if the shortened hearing procedure in Section 1.3.4~~Paragraph 1.3.2~~ is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.

(c) The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives:

~~(i)~~(1) full disclosure of all relevant Documents and information;

~~(ii)~~(2) the exercise of due diligence in the conduct of discovery by a Participant; and

~~(iii)~~(3) disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

(a) Unless the Hearing Officer orders otherwise and with the exception of (i) any adverse Participant examination pursuant to Section~~Paragraph~~ 1.6.16 and (ii) the testimony and Documents of a non-Participant provided pursuant to an order to produce or provide Documents, information or testimony, all witness direct testimony to be submitted in an Evidentiary ~~H~~Hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the eEvidentiary ~~h~~Hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended.

(b) Where a Participant intends to use a Document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (other than

Documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce Documents), the Participant intending to use such Document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at [a-the evidentiary Testimonial hHearing](#).

(c) Compliance Staff shall file the Documents it intends to offer into evidence as its direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, first. The Registered Entity shall file the Documents it intends to offer into evidence as its direct case, which also may be responsive to Staff's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, second. Staff shall file as its rebuttal case the Documents it intends to offer into evidence in response to the Registered Entity's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, third.

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

(e) Each round of evidence shall be limited in scope to responding to the preceding round of evidence, except that the Registered Entity's direct case may exceed the scope of Staff's direct case if necessary for the Registered Entity to set forth its direct case fully.

(f) The Participants shall file the Documents they intend to offer into evidence in accordance with the Hearing Officer's schedule, as it may be amended. Such filings of written testimony and other evidence in advance of the [eEvidentiary hHearing](#) shall not entitle the Documents to be admitted into the evidentiary record. The Participants must offer their witnesses' testimony and other proposed evidence for admission into the evidentiary record during the [eEvidentiary hHearing](#).

(g) Any Participant who fails, without good cause shown, to comply with the Hearing Officer's schedule for the filing of written testimony and other evidence in advance of the [eEvidentiary hHearing](#) may be limited in the presentation of its evidence during the [eEvidentiary hHearing](#) or have its participation in the [eEvidentiary hHearing](#) otherwise restricted by the Hearing Officer to avoid undue prejudice and delay.

1.5.10 Protective Orders

(a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of any non-Participant ordered to produce Documents,

information or testimony, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.

(b) The following types of information will be considered entitled to protection through a protective order:

- (i) Confidential Business and Market Information, including information that is proprietary, commercially valuable, or competitively sensitive;
- (ii) ___ Critical Energy Infrastructure Information;
- (iii) ___ information related to a Cyber Security Incident;
- (iv) ___ personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information;
- (v) ___ audit work papers;
- (vi) ___ investigative files or Documents that would disclose investigative techniques of Staff, any Compliance Enforcement Authority, the ERO or any federal, state or foreign regulatory authority.

Nothing in this ~~Subparagraph~~ subsection 1.5.10(b) shall require Staff to produce any Documents it is entitled to withhold under subsection ~~Subparagraph~~ 1.5.7(b).

(c) A motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, Documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information while maintaining its proprietary status.

(d) A Document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that Document or statement and a ruling on such a motion by the Hearing Officer.

(e) The protective order shall identify the data, Documents or information that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.

(f) A public redacted version of each Document and transcript that contains information that is protected pursuant to this Section ~~Paragraph~~ must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.

(g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other

than those entitled to view [or hear](#) the proprietary information in accordance with the protective order.

1.5.11 Pre-Evidentiary Hearing Memorandum

(a) The Hearing Officer or the Hearing Body may request, ~~as needed on a case by case basis due to the number or complexity of the issue(s)~~, the submission of memoranda prior to the eEvidentiary hHearing that [set forth](#)~~outline~~ each Participant's position on the issue(s) in dispute, the key facts and arguments, ~~and~~ the applicable Reliability Standard, rules, orders or other authority, [and such other matters as may be directed by the Hearing Officer or the Hearing Body.](#)

(b) The purpose of such memoranda will be to aid the Hearing Officer and Hearing Body in preparation for the eEvidentiary hHearing. A Participant will not be deemed to have waived any issue, fact or argument that is not set forth in a pre-eEvidentiary hHearing memorandum.

(c) The Hearing Officer may establish [pageword](#) limitations on such submissions.

1.5.12 Certification of Questions to the NERC Board of Trustees

(a) [Should a hearing present 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 other extraordinary circumstances that make prompt consideration of the question by the NERC Board of Trustees appropriate, the Hearing Officer, on his or her own motion or on motion of a Participant, may recommend to the Hearing Body that it certify, or the Hearing Body on its own motion may decide to certify, the question to the Board of Trustees for determination pursuant to Section 412 of the Rules of Procedure.](#)

(b) [If the Hearing Officer, on his or her own motion, or the Hearing Body, on its own motion, wishes to present a question to the Hearing Body for certification to the NERC Board of Trustees, the Hearing Officer shall first provide the Participants the opportunity to submit memoranda addressing whether the question should be certified and the precise terms of the question to be certified.](#)

(c) [If a Participant files a motion requesting, or the Hearing Officer determines on his or her own motion, that a question should be certified to the Board of Trustees, the Hearing Officer shall submit a written recommendation on the matter to the Hearing Body. If the request for certification is based on the motion of a Participant, the Hearing Officer shall also submit to the Hearing Body the motion and any answers to the motion that were filed. If the request for certification is on the Hearing Officer's own motion, the Hearing Officer shall also submit to the Hearing Body the Participants' memoranda that were filed pursuant to subsection \(b\).](#)

(d) [Questions of fact presented by the particular matter in dispute in a hearing shall not be the subject of a certification to the Board of Trustees.](#)

(e) [The Hearing Body shall determine, based on the criteria specified in subsection \(a\), whether the proposed question shall be certified to the Board of Trustees for determination. To certify the proposed question, 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. If the Hearing Body determines that the proposed question should be certified to the Board of Trustees, the Hearing Body shall also determine whether the hearing should be suspended, in whole or in part, while the question is pending before the Board of Trustees for determination.

(f) As provided in Rule of Procedure Section 412, the Board of Trustees may decide to reject a proposed certification from a Hearing Body.

(f) If the Board of Trustees accepts certification of a question and issues a determination on the question, the hearing shall proceed following the determination in accordance with the Board of Trustees' decision.

1.6 Procedure at Evidentiary Hearing~~Procedure~~

1.6.1 Purpose of Evidentiary Hearings

The purpose of the eEvidentiary hHearing shall be to admit the Participants' evidence into the record, and for each Participant to have the opportunity to cross-examine the other Participant's witnesses. A schedule for briefs, unless waived by the Participants, shall be set at the conclusion of the eEvidentiary hHearing.~~The evidentiary hearing also may be used to address any other issue pending between the Participants.~~

1.6.2 Order of Receiving Evidence

In all proceedings Compliance Staff shall open and close.

1.6.3 Opening and Closing Statements

Opening and closing statements will not be made during the eEvidentiary hHearing as a matter of course except that such statements may be allowed when requested by a Participant, and shall be required when requested by the Hearing Officer or the Hearing Body. Any Participant's request for such statements, or a Hearing Officer or Hearing Body notice requiring such statements, shall be made at least ten (10) days in advance of the start of the eEvidentiary hHearing.

1.6.4 Right of Participant to Present Evidence

Subject to compliance with the requirements of these Hearing Procedures concerning the timing of submission of written testimony and other evidence, a Participant has the right to present such evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

1.6.5 Exhibits

(a) All material offered in evidence, except oral testimony allowed by the Hearing Officer or the testimony of a non-Participant pursuant to an order to produce or provide Documents, information or testimony, shall be offered in the form of an exhibit.

(b) Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

1.6.6 Witness Attendance at Testimonial Evidentiary Hearing

(a) Each witness shall attend the evidentiary Testimonial hearing in person unless a Participant has been informed in advance of the evidentiary Testimonial hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the Hearing Body have any questions for the witness, in which event the witness does need not be present at the evidentiary Testimonial hearing.

(b) A person compelled to appear, voluntarily testifying, or making a statement may be accompanied, represented and advised by an attorney.

(c) All testimony offered at the evidentiary Testimonial hearing is to be under oath or affirmation. If a witness is not required to attend the evidentiary Testimonial hearing, then the Participant on whose behalf the witness prepared testimony shall submit an affidavit of the witness attesting to the veracity of the witness' testimony, and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

1.6.7 Admission of Evidence

(a) Compliance Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise.

(b) Except for witnesses who are not required to attend the evidentiary Testimonial hearing, the Participants shall call each witness in turn. Following the witness' swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony or exhibits that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant. The Participant whose witness has made changes or written corrections to written testimony and exhibits shall file corrected copies with the Clerk and provide corrected copies to the Hearing Officer and other Participant.

(c) Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Section Paragraph 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence.

(d) The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Body, in accordance with Section Paragraph 1.6.14, and then for redirect examination in accordance with Section Paragraph

1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

(e) Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce or provide Documents, information or testimony issued to a non-Participant, no witness shall be allowed to testify ~~during the evidentiary hearing~~ unless a Participant has served the witness' written testimony in advance of the evidentiary Testimonial hHearing in accordance with the schedule established by the Hearing Officer. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the Compliance Enforcement Authority's policy to discourage witness testimony at an evidentiary Testimonial hHearing when a Participant has not served the witness' written testimony in advance of the evidentiary Testimonial hHearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

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

(a) When relevant and material matter offered in evidence is embraced in a book, paper or Document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable.

(b) If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or Document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit.

(c) All other Participants shall be afforded an opportunity to examine the book, paper or Document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

1.6.9 Stipulations

The Participants may stipulate to any relevant fact or the authenticity of any relevant Document. Stipulations may be made in writing or entered orally in the record. Notwithstanding stipulation, the Hearing Officer may require evidence of the facts stipulated in order to provide a complete evidentiary record on which to base the final order.

1.6.10 Official Notice

(a) Where relevant and material to the subject matter of the proceeding, the Hearing Officer may, upon request of a Participant, take official notice of any of the following:

- (1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of other Compliance Enforcement Authorities.

- (2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of the Compliance Enforcement Authority.
- (3) State, provincial and federal statutes and municipal and local ordinances.
- (4) The decisions of state, provincial and federal courts.
- (5) Generally recognized scientific or technical facts within the specialized knowledge of the Compliance Enforcement Authority.
- (6) All other matters of which the courts of the United States may take judicial notice.

(b) All requests to take official notice shall be submitted in advance of the eEvidentiary hHearing in accordance with a schedule established by the Hearing Officer. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested.

(c) An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

1.6.11 Admissibility of Evidence

(a) Any evidence offered, including that included in a book, paper or Document pursuant to SectionParagraph 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

(b) The admission of evidence shall not be limited by the generally recognized rules of evidence as applied in the courts of the United States or of the states, although the Hearing Officer may take such rules of evidence into consideration in ruling on the admissibility of evidence. The Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and shall admit evidence if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.

(c) Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

1.6.12 Offer of Proof

Any Participant who has had evidence excluded may make an offer of proof on the record. The offer of proof may consist of a statement made on the record of the substance of the evidence that the Participant claims would have been adduced, or any written or documentary exhibit that the Participant sought to introduce. Any such exhibit shall be retained as part of the record.

1.6.13 Reservation of Evidentiary Ruling

(a) The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto.

(b) If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the evidentiary hearing to ensure a full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

1.6.14 Cross-Examination

(a) Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. Leading questions are permitted on cross-examination.

(b) The credibility of a witness may be attacked by any Participant, including the Participant calling the witness.

(c) The Hearing Officer and any member of the Hearing Body may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Section Paragraph 1.6.15. —If a member of the Hearing Body seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

1.6.15 Redirect Examination

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the Hearing Body. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the Hearing Body. —If a member of the Hearing Body seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

1.6.16 Examination of Adverse Participant

(a) Any Participant may call any adverse Participant, or any employee or agent thereof, during the evidentiary hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination.

(b) If a Participant intends to call an adverse Participant for examination, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) days in advance of the evidentiary hearing, and the Participant who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) days in advance of the evidentiary hearing.

(c) Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide Documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.

1.6.17 Close of the Evidentiary Record

(a) The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the eEvidentiary hHearing.

(b) Evidence may not be added to the evidentiary record after it is closed, provided that, prior to issuance of the Hearing Body's final order, the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant. For the purpose 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.

1.7 Post- Evidentiary Hearing Procedure

1.7.1 Briefs

(a) At the close of the eEvidentiary hHearing, Participants may file initial and reply briefs.

(b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.

(c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, the number and complexity of the issues, and the objective of expedition.

(d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.

(e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.

(f) The Hearing Officer may, ~~with the agreement of the Participants~~, allow oral closing statements to be made on the record in lieu of briefs.

(g) The Hearing Officer may establish reasonable wordpage limitations applicable to briefs.

1.7.2 Other Pleadings

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

1.7.3 Draft Initial Opinions

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

1.7.4 Hearing Officer's Initial Opinion

(a) ~~Except as otherwise ordered by the Hearing Body, a~~At the conclusion of the ~~e~~Evidentiary ~~h~~Hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Body's review and consideration.

(b) The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues ~~of fact, law or discretion~~ presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Remedial Action Directive that the Hearing Officer proposes the Hearing Body require. ~~If the initial opinion proposes a Penalty, the initial opinion shall include a proposed Notice of Penalty.~~

(c) The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cyber Security Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to ~~Section Paragraph~~ 1.5.10.

1.7.5 Exceptions

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

(b) Exceptions and replies thereto with respect to statements, findings of fact or conclusion in the initial opinion must be specific and must be stated and numbered separately in the brief. With regard to each exception, the Participant must specify each error asserted, and include a concise discussion of any policy considerations applicable and any other evidence and arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed (1) together in one brief; or (2) in two separate documents, one designated as the brief containing arguments, and the other designated "Exceptions," containing the suggested replacement language.

(c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.

(d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.

(e) Statements of fact should be supported by citation to the record.

(f) The Hearing Officer may establish reasonable wordpage limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such wordpage limitations shall not apply to a Participant's proposed replacement language.

(g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

1.7.6 Oral Argument

(a) The Hearing Body may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues.

(b) If oral argument is held where briefs have been filed, argument may be limited to issues identified by the Hearing Body. The Hearing Body will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

(c) The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record, and ~~shall~~ contain accurate ~~record~~ citations to the record. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral argument shall be served on all Participants not less than forty-eight (48) hours prior to the time and date of oral argument.

1.7.7 Additional Hearings

After the evidentiary record has been closed but before issuance of the Hearing Body's final order~~an initial opinion~~, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the Hearing Body's own motion if there is reason to believe that reopening is warranted by any changes in conditions, or by the need to compile a complete evidentiary record on which to base the final order. Any Participant may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes in conditions or the identification of additional evidence that should be included in the record, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

1.7.8 Hearing Body Final Order

(a) Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Body shall issue its final order.

(b) Issuance of a final order shall require (i) a quorum of the Hearing Body, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Body, and (ii) majority

vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum).

(c) The Hearing Body shall strive, but shall not be required, to issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The final order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues ~~of fact, law or discretion~~ presented on the record.

(d) The Hearing Body will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, ~~sanction~~, Remedial Action Directive or Mitigation Plan required. ~~If the final order imposes a Penalty, it shall be entitled "Final Order and Notice of Penalty".~~

(e) The final order shall note if the subject of the proceeding has been deemed to involve a Cyber security Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to ~~Section Paragraph~~ 1.5.10.

(f) ~~The Hearing Body shall direct the Clerk to serve the final order on the Participants.~~ The service of the final order shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.

1.7.9 The Record

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

- (1) Notice of Alleged Violation and Registered Entity's response thereto;
- (2) Registered Entity's proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- (3) Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
- (4) Registered Entity's request for a hearing;
- (5) Participant filings, motions, and responses;
- (6) Notices, rulings, orders and other issuances of the Hearing Officer and Hearing Body;
- (7) Transcripts;
- (8) Evidence received;

- (9) Written comments submitted in lieu of written testimony;
- (10) Matters officially noticed;
- (11) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- (12) ~~Briefs, p~~Pre-~~e~~Evidentiary ~~h~~Hearing memorandums, briefs, and draft opinions;
- (13) Post-hearing pleadings other than briefs;
- (14) The Hearing Officer's initial opinion;
- (15) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- (16) The Hearing Body's final order, ~~any Notice of Penalty issued therewith~~, and the Clerk's notice transmitting the final order to the Participants;
- (17) All notices of ex parte communications; and
- (18) Any notifications of recusal and motions for disqualification of a member of the Hearing Body or Hearing Officer or Technical Advisor and any responses or replies thereto.

1.7.10 Appeal

A Participant or a Regional Entity acting as the Compliance Enforcement Authority, may appeal a final order of the Hearing Body ~~may be appealed~~ to NERC in accordance with NERC's Rules of Procedure, Section 409. ~~The Clerk shall transmit to NERC the record of any docket that is the subject of an appealed final order.~~

1.8 Settlement

Settlements may be entered into at any time pursuant to Section 5.6 of the NERC Compliance Monitoring and Enforcement Program and the Compliance Enforcement Authority's settlement procedures, provided, that (i) the Compliance Enforcement Authority may decline to engage in or continue settlement negotiations after a Possible Violation or Alleged Violation becomes a Confirmed Violation, and (ii) the Compliance Enforcement Authority, the Registered Entity or any other Participant may terminate settlement negotiations at any time.

1.9 Remedial Action Directives

1.9.1 Initiation of Remedial Action Directive Hearing

(a) Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an Alleged Violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Registered Entity in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program. The Compliance

Enforcement Authority will notify NERC within two (2) business days after its Staff issues a Remedial Action Directive.

(b) The Registered Entity may contest the Remedial Action Directive by filing a written notice with the Clerk of the Compliance Enforcement Authority that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the Registered Entity does not give written notice to the Compliance Enforcement Authority within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

(c) The Clerk shall assign a docket number, and issue a notice of hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.4.1.

1.9.2 Remedial Action Directive Hearing Procedure

(a) Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this SectionParagraph 1.9.2. The fullgeneral hearing procedures described in Sections 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this SectionParagraph.

(b) The Remedial Action Directive hearing mayshall be presided over by a Hearing Officer and will be conducted according to the following guidelines:

a)(1) The Hearing Officer or the Hearing Body will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.

b)(2) An evidentiaryTestimonial Hhearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.

e)(3) At the Testimonialevidentiary hHearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.

d)(4) At the Testimonialevidentiary hHearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.

e)(5) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the Hearing Body. Oral argument shall not be held.

(c) The Hearing Body shall issue a summary written decision within ten (10) days following submission of the last brief~~the hearing~~, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that ~~the~~ Hearing Body finds appropriate. 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.

(d) Within thirty (30) days following issuance of its summary written decision, the Hearing Body shall issue a full written decision. The written decision shall state the conclusions of the Hearing Body with respect to the Remedial Action Directive, and shall explain the reasons for the Hearing Body's conclusions.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

ATTACHMENT 5A

**REVISED APPENDIX 5B OF THE RULES OF PROCEDURE –
*STATEMENT OF COMPLIANCE REGISTRY CRITERIA***

CLEAN VERSION

**Proposed Revisions 5-04-2012
[Incorporates revisions filed with FERC on
January 25, 2012]**

Appendix 5B

Statement of Compliance Registry Criteria

Revision 5.1

Effective: January 31, 2012

Statement of Compliance Registry Criteria (Revision 5.1)

Summary

Since becoming the Electric Reliability Organization (ERO), NERC has initiated a program to identify candidate organizations for its Compliance Registry. The program, conducted by NERC and the Regional Entities¹, will also confirm the functions and information now on file for currently-registered organizations. NERC and the Regional Entities have the obligation to identify and register all entities that meet the criteria for inclusion in the Compliance Registry, as further explained in the balance of this document.

This document describes how NERC will identify organizations that may be candidates for Registration and assign them to the Compliance Registry.

Organizations will be responsible to register and to comply with approved Reliability Standards to the extent that they are owners, operators, and users of the Bulk Power System, perform a function listed in the functional types identified in Section II of this document, and are material to the Reliable Operation of the interconnected Bulk Power System as defined by the criteria and notes set forth in this document. NERC will apply the following principles to the Compliance Registry:

- In order to carry out its responsibilities related to enforcement of Reliability Standards, NERC must identify the owners, operators, and users of the Bulk Power System who have a material impact² on the Bulk Power System through a Compliance Registry. NERC and the Regional Entities will make their best efforts to identify all owners, users and operators who have a material reliability impact on the Bulk Power System in order to develop a complete and current Compliance Registry list. The Compliance Registry will be updated as required and maintained on an on-going basis.
- Organizations listed in the Compliance Registry are responsible and will be monitored for compliance with applicable mandatory Reliability Standards. They

¹ The term “Regional Entities” includes Cross-Border Regional Entities.

² The criteria for determining whether an entity will be placed on the Compliance Registry are set forth in the balance of this document. At any time a person may recommend in writing, with supporting reasons, to the Director of Compliance that an organization be added to or removed from the Compliance Registry, pursuant to NERC ROP 501.1.3.5.

will be subject to NERC's and the Regional Entities' Compliance Monitoring and Enforcement Programs.

- NERC and Regional Entities will not monitor nor hold those not in the Compliance Registry responsible for compliance with the Reliability Standards. An entity which is not initially placed on the Compliance Registry, but which is identified subsequently as having a material reliability impact, will be added to the Compliance Registry. Such entity will not be subject to a sanction or Penalty by NERC or the Regional Entity for actions or inactions prior to being placed on the Compliance Registry, but may be required to comply with a Remedial Action Directive or Mitigation Plan in order to become compliant with applicable Reliability Standards. After such entity has been placed on the Compliance Registry, it shall be responsible for complying with Reliability Standards and may be subject to sanctions or Penalties as well as any Remedial Action Directives and Mitigation Plans required by the Regional Entities or NERC for future violations, including any failure to follow a Remedial Action Directive or Mitigation Plan to become compliant with Reliability Standards.
- Required compliance by a given organization with the Reliability Standards will begin the later of (i) inclusion of that organization in the Compliance Registry and (ii) approval by the Applicable Governmental Authority of mandatory Reliability Standards applicable to the Registered Entity.

Entities responsible for funding NERC and the Regional Entities have been identified in the budget documents filed with FERC. Presence on or absence from the Compliance Registry has no bearing on an entity's independent responsibility for funding NERC and the Regional Entities.

Background

In 2005, NERC and the Regional Entities conducted a voluntary organization registration program limited to Balancing Authorities, Planning Authorities, regional reliability organizations, Reliability Coordinators, Transmission Operators, and Transmission Planners. The list of the entities that were registered constitutes what NERC considered at that time as its Compliance Registry.

NERC has recently initiated a broader program to identify additional organizations potentially eligible to be included in the Compliance Registry and to confirm the information of organizations currently on file. NERC believes this is a prudent activity at this time because:

- As of July 20, 2006, NERC was certified as the ERO created for the U.S. by the Energy Policy Act of 2005 (EPAct) and FERC Order 672. NERC has also filed with Canadian authorities for similar recognition in their respective jurisdictions.
- FERC's Order 672 directs that owners, operators and users of the Bulk Power System shall be registered with the ERO and the appropriate Regional Entities.
- As the ERO, NERC has filed its current Reliability Standards with FERC and with Canadian authorities. As accepted and approved by FERC and appropriate Canadian authorities, the Reliability Standards are no longer voluntary, and organizations that do

not fully comply with them may face Penalties or other sanctions determined and levied by NERC or the Regional Entities.

- NERC’s Reliability Standards include compliance Requirements for additional reliability function types beyond the six types registered by earlier registration programs.
- Based on selection as the ERO, the extension and expansion of NERC’s current Registration program³ is the means by which NERC and the Regional Entities will plan, manage and execute Reliability Standard compliance oversight of owners, operators, and users of the Bulk Power System.
- Organizations listed in the Compliance Registry are subject to NERC’s and the Regional Entities’ Compliance Monitoring and Enforcement Programs.

Statement of Issue

As the ERO, NERC intends to comprehensively and thoroughly protect the reliability of the grid. To support this goal NERC will include in its Compliance Registry each entity that NERC concludes can materially impact the reliability of the Bulk Power System. However, the potential costs and effort of ensuring that every organization potentially within the scope of “owner, operator, and user of the Bulk Power System” becomes registered while ignoring their impact upon reliability, would be disproportionate to the improvement in reliability that would reasonably be anticipated from doing so.

NERC wishes to identify as many organizations as possible that may need to be listed in its Compliance Registry. Identifying these organizations is necessary and prudent at this time for the purpose of determining resource needs, both at the NERC and Regional Entity level, and to begin the process of communication with these entities regarding their potential responsibilities and obligations. NERC and the Regional Entities believe that primary candidate entities can be identified at this time, while other entities can be identified later, as and when needed. Selection principles and criteria for the identification of these initial entities are required. This list will become the “Initial Non-binding Organization Registration List”. With FERC having made the approved Reliability Standards enforceable, this list becomes the NERC Compliance Registry.

Resolution

NERC and the Regional Entities have identified two principles they believe are key to the entity selection process. These are:

1. There needs to be consistency between Regions and across the continent with respect to which entities are registered, and;
2. Any entity reasonably deemed material to the reliability of the Bulk Bower System will be registered, irrespective of other considerations.

To address the second principle the Regional Entities, working with NERC, will identify and register any entity they deem material to the reliability of the Bulk Power System.

³ See: NERC ERO Application; Exhibit C; Section 500 – Organization Registration and Certification.

In order to promote consistency, NERC and the Regional Entities intend to use the following criteria as the basis for determining whether particular entities should be identified as candidates for Registration. All organizations meeting or exceeding the criteria will be identified as candidates.

The following four groups of criteria (Sections I-IV) plus the statements in Section V will provide guidance regarding an entity's Registration status:

- Section I determines if the entity is an owner, operator, or user of the Bulk Power System and, hence, a candidate for organization Registration.
- Section II uses NERC's current functional type definitions to provide an initial determination of the functional types for which the entities identified in Section I should be considered for Registration.
- Section III lists the criteria regarding smaller entities; these criteria can be used to forego the Registration of entities that were selected to be considered for Registration pursuant to Sections I and II and, if circumstances change, for later removing entities from the Registration list that no longer meet the relevant criteria.
- Section IV — additional criteria for joint Registration. Joint Registration criteria may be used by joint action agencies, generation and transmission cooperatives and other entities which agree upon a clear division of compliance responsibility for Reliability Standards by written agreement. Pursuant to FERC's directive in paragraph 107 of Order No. 693, rules pertaining to joint Registration and Joint Registration Organizations will now be found in Sections 501 and 507 of the NERC Rules of Procedure.

I. Entities that use, own or operate Elements of the Bulk Electric System as established by NERC's approved definition of Bulk Electric System below are (i) owners, operators, and users of the Bulk Power System and (ii) candidates for Registration:

“Bulk Electric System” or “BES” means unless modified by the lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy.

Inclusions:

- ***I1*** - Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded under Exclusion E1 or E3.
- ***I2*** - Generating resource(s) with gross individual nameplate rating greater than 20 MVA or gross plant/facility aggregate nameplate rating greater than 75 MVA including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above.
- ***I3*** - Blackstart Resources identified in the Transmission Operator's restoration plan.
- ***I4*** - Dispersed power producing resources with aggregate capacity greater than 75 MVA (gross aggregate nameplate rating) utilizing a system designed primarily for aggregating capacity, connected at a common point at a voltage of 100 kV or above.

- **I5** –Static or dynamic devices (excluding generators) dedicated to supplying or absorbing Reactive Power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer that is designated in Inclusion II.

Exclusions:

- **E1 - Radial systems:** A group of contiguous transmission Elements that emanates from a single point of connection of 100 kV or higher and:
 - a) Only serves Load. Or,
 - b) Only includes generation resources, not identified in Inclusion I3, with an aggregate capacity less than or equal to 75 MVA (gross nameplate rating). Or,
 - c) Where the radial system serves Load and includes generation resources, not identified in Inclusion I3, with an aggregate capacity of non-retail generation less than or equal to 75 MVA (gross nameplate rating).

Note – A normally open switching device between radial systems, as depicted on prints or one-line diagrams for example, does not affect this exclusion.
- **E2 - A generating unit or multiple generating units on the customer's side of the retail meter that serve all or part of the retail Load with electric energy if:** (i) the net capacity provided to the BES does not exceed 75 MVA, and (ii) standby, back-up, and maintenance power services are provided to the generating unit or multiple generating units or to the retail Load by a Balancing Authority, or provided pursuant to a binding obligation with a Generator Owner or Generator Operator, or under terms approved by the applicable regulatory authority.
- **E3 - Local networks (LN):** A group of contiguous transmission Elements operated at or above 100 kV but less than 300 kV that distribute power to Load rather than transfer bulk power across the interconnected system. LN's emanate from multiple points of connection at 100 kV or higher to improve the level of service to retail customer Load and not to accommodate bulk power transfer across the interconnected system. The LN is characterized by all of the following:
 - a) Limits on connected generation: The LN and its underlying Elements do not include generation resources identified in Inclusion I3 and do not have an aggregate capacity of non-retail generation greater than 75 MVA (gross nameplate rating);
 - b) Power flows only into the LN and the LN does not transfer energy originating outside the LN for delivery through the LN; and
 - c) Not part of a Flowgate or transfer path: The LN does not contain a monitored Facility of a permanent Flowgate in the Eastern Interconnection, a major transfer path within the Western Interconnection, or a comparable monitored Facility in the ERCOT or Quebec Interconnections, and is not a monitored Facility included in an Interconnection Reliability Operating Limit (IROL).
- **E4 – Reactive Power devices owned and operated by the retail customer solely for its own use.**

Note - Elements may be included or excluded on a case-by-case basis through the Rules of Procedure exception process.

- II. Entities identified in Part I above will be categorized as Registration candidates who may be subject to Registration under one or more appropriate Functional Entity types based on a comparison of the functions the entity normally performs against the following function type definitions:

Function Type	Acronym	Definition/Discussion
Balancing Authority	BA	The responsible entity that integrates resource plans ahead of time, maintains Load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real-time.
Distribution Provider	DP	Provides and operates the “wires” between the transmission system and the end-use customer. For those end-use customers who are served at transmission voltages, the Transmission Owner also serves as the Distribution Provider. Thus, the Distribution Provider is not defined by a specific voltage, but rather as performing the distribution function at any voltage.
Generator Operator	GOP	The entity that operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services.
Generator Owner	GO	Entity that owns and maintains generating units.
Interchange Authority	IA	The responsible entity that authorizes implementation of valid and balanced Interchange Schedules between Balancing Authority Areas, and ensures communication of Interchange information for reliability assessment purposes.
Load-Serving Entity	LSE	Secures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.
Planning Authority	PA	The responsible entity that coordinates and integrates transmission Facilities and service plans, resource plans, and Protection Systems.

Function Type	Acronym	Definition/Discussion
Purchasing-Selling Entity	PSE	The entity that purchases, or sells, and takes title to, energy, capacity, and Interconnected Operations Services. PSE may be affiliated or unaffiliated merchants and may or may not own generating Facilities.
Reliability Coordinator	RC	The entity that is the highest level of authority who is responsible for the Reliable Operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator's vision.
Reserve Sharing Group	RSG	A group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating reserves required for each Balancing Authority's use in recovering from contingencies within the group. Scheduling energy from an Adjacent Balancing Authority to aid recovery need not constitute reserve sharing provided the transaction is ramped in over a period the supplying party could reasonably be expected to load generation in (e.g., ten minutes). If the transaction is ramped in quicker, (e.g., between zero and ten minutes), then, for the purposes of disturbance control performance, the areas become a Reserve Sharing Group.
Resource Planner	RP	The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific Loads (customer demand and energy requirements) within a Planning Authority area.
Transmission Owner	TO	The entity that owns and maintains transmission Facilities.
Transmission Operator	TOP	The entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission Facilities.

Function Type	Acronym	Definition/Discussion
Transmission Planner	TP	The entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority area.
Transmission Service Provider	TSP	The entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable Transmission Service agreements.

III. Entities identified in Part II above as being subject to Registration as an LSE, DP, GO, GOP, TO, or TOP should be excluded from the Compliance Registry for these functions if they do not meet any of the criteria listed below:

III (a) Load-Serving Entity:

- III.a.1 Load-Serving Entity peak Load is > 25 MW and is directly connected to the Bulk Power (>100 kV) System, or;
- III.a.2 Load-Serving Entity is designated as the responsible entity for Facilities that are part of a required underfrequency Load shedding (UFLS) program designed, installed, and operated for the protection of the Bulk Power System, or;
- III.a.3 Load-Serving Entity is designated as the responsible entity for Facilities that are part of a required undervoltage Load shedding (UVLS) program designed, installed, and operated for the protection of the Bulk Power System.
[Exclusion: A Load-Serving Entity will not be registered based on these criteria if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a Load-Serving Entity, Balancing Authority, Transmission Operator, generation and transmission cooperative or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.]
- III.a.4 Distribution Providers registered under the criteria in III.b.1 or III.b.2 will be registered as a Load Serving Entity (LSE) for all Load directly connected to their distribution facilities.
[Exclusion: A Distribution Provider will not be registered based on this criterion if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has

registered for the appropriate function for the transferred responsibilities, such as a Load-Serving Entity, Balancing Authority, Transmission Operator, generation and transmission cooperative, or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.]

III(b) Distribution Provider:

- III.b.1 Distribution Provider system serving >25 MW of peak Load that is directly connected to the Bulk Power System.

[Exclusion: A Distribution Provider will not be registered based on this criterion if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a Load-Serving Entity, Balancing Authority, Transmission Operator, generation and transmission cooperative, or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.] or;

- III.b.2 Distribution Provider is the responsible entity that owns, controls, or operates Facilities that are part of any of the following Protection Systems or programs designed, installed, and operated for the protection of the Bulk Power System:

- a required UFLS program.
- a required UVLS program.
- a required Special Protection System.
- a required transmission Protection System.

[Exclusion: A Distribution Provider will not be registered based on these criteria if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a Load-Serving Entity, Balancing Authority, Transmission Operator, generation and transmission cooperative, or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.]

III(c) Generator Owner/Operator:

- III.c.1 Individual generating unit > 20 MVA (gross nameplate rating) and is directly connected to the Bulk Power System, or;

- III.c.2 Generating plant/facility > 75 MVA (gross aggregate nameplate rating) or when the entity has responsibility for any facility consisting of one or more units that are connected to the Bulk Power System at a common bus with total generation above 75 MVA gross nameplate rating, or;

- III.c.3 Any generator, regardless of size, that is a Blackstart Resource material to and designated as part of a Transmission Operator entity's restoration plan, or;
- III.c.4 Any generator, regardless of size, that is material to the reliability of the Bulk Power System.

[Exclusions:

A Generator Owner/Operator will not be registered based on these criteria if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a Load-Serving Entity, generation and transmission cooperative or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.

As a general matter, a customer-owned or operated generator/generation that serves all or part of retail Load with electric energy on the customer's side of the retail meter may be excluded as a candidate for Registration based on these criteria if (i) the net capacity provided to the Bulk Power System does not exceed the criteria above or the Regional Entity otherwise determines the generator is not material to the Bulk Power System and (ii) standby, back-up and maintenance power services are provided to the generator or to the retail Load pursuant to a binding obligation with another Generator Owner/Operator or under terms approved by the local regulatory authority or the Federal Energy Regulatory Commission, as applicable.]

III(d) Transmission Owner/Operator:

- III.d.1 An entity that owns/operates an integrated transmission Element associated with the Bulk Power System 100 kV and above, or lower voltage as defined by the Regional Entity necessary to provide for the Reliable Operation of the interconnected transmission grid; or
- III.d.2 An entity that owns/operates a transmission Element below 100 kV associated with a Facility that is included on a critical Facilities list that is defined by the Regional Entity.

[Exclusion: A Transmission Owner/Operator will not be registered based on these criteria if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a Load-Serving Entity, generation and transmission cooperative or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.

IV. Joint Registration Organization and applicable Member Registration.

Pursuant to FERC's directive in paragraph 107 of Order No. 693, NERC's rules pertaining to joint Registrations and Joint Registration Organizations are now found in Section 501 and 507 of the NERC Rules of Procedure.

V. 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 provided in Section 500 of NERC's Rules of Procedure and as described in Note 3 below.

Notes to the above Criteria

1. The above are general criteria only. The Regional Entity considering Registration of an organization not meeting (e.g., smaller in size than) the criteria may propose Registration of that organization if the Regional Entity believes and can reasonably demonstrate⁴ that the organization is a Bulk Power System owner, or operates, or uses Bulk Power System assets, and is material to the reliability of the Bulk Power System. Similarly, the Regional Entity may exclude an organization that meets the criteria described above as a candidate for Registration if it believes and can reasonably demonstrate to NERC that the Bulk Power System owner, operator, or user does not have a material impact on the reliability of the Bulk Power System.
2. An organization not identified using the criteria, but wishing to be registered, may request that it be registered. For further information refer to: NERC Rules of Procedure, Section 500 – Organization Registration and Certification; Part 1.3.
3. An organization may challenge its Registration within the Compliance Registry. NERC or the Regional Entity will provide the organization with all information necessary to timely challenge that determination including notice of the deadline for contesting the determination and the relevant procedures to be followed as described in the NERC Rules of Procedure; Section 500 – Organization Registration and Certification.
4. If an entity is part of a class of entities excluded based on the criteria above as individually being unlikely to have a material impact on the reliability of the Bulk Power System, but that in aggregate have been demonstrated to have such an impact it may be registered for applicable Reliability Standards and Requirements irrespective of other considerations.

⁴ The reasonableness of any such demonstration will be subject to review and remand by NERC itself, or by any Applicable Governmental Authority.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

ATTACHMENT 5B

**REVISED APPENDIX 5B OF THE RULES OF PROCEDURE –
*STATEMENT OF COMPLIANCE REGISTRY CRITERIA***

REDLINED VERSION

**Proposed Revisions 5-04-2012
[Incorporates revisions filed with FERC on
January 25, 2012]**

Appendix 5B

Statement of Compliance Registry Criteria

Revision 5.1

Effective: January 31, 2012

Statement of Compliance Registry Criteria (Revision 5.1)

Summary

Since becoming the Electric Reliability Organization (ERO), NERC has initiated a program to identify candidate organizations for its Compliance Registry. The program, conducted by NERC and the Regional Entities¹, will also confirm the functions and information now on file for currently-registered organizations. NERC and the Regional Entities have the obligation to identify and register all entities that meet the criteria for inclusion in the Compliance Registry, as further explained in the balance of this document.

This document describes how NERC will identify organizations that may be candidates for Registration and assign them to the Compliance Registry.

Organizations will be responsible to register and to comply with approved Reliability Standards to the extent that they are owners, operators, and users of the Bulk Power System, perform a function listed in the functional types identified in Section II of this document, and are material to the Reliable Operation of the interconnected Bulk Power System as defined by the criteria and notes set forth in this document. NERC will apply the following principles to the Compliance Registry:

- In order to carry out its responsibilities related to enforcement of Reliability Standards, NERC must identify the owners, operators, and users of the Bulk Power System who have a material impact² on the Bulk Power System through a Compliance Registry. NERC and the Regional Entities will make their best efforts to identify all owners, users and operators who have a material reliability impact on the Bulk Power System in order to develop a complete and current Compliance Registry list. The Compliance Registry will be updated as required and maintained on an on-going basis.
- Organizations listed in the Compliance Registry are responsible and will be monitored for compliance with applicable mandatory Reliability Standards. They

¹ The term “Regional Entities” includes Cross-Border Regional Entities.

² The criteria for determining whether an entity will be placed on the Compliance Registry are set forth in the balance of this document. At any time a person may recommend in writing, with supporting reasons, to the Director of Compliance that an organization be added to or removed from the Compliance Registry, pursuant to NERC ROP 501.1.3.5.

will be subject to NERC's and the Regional Entities' Compliance Monitoring and Enforcement Programs.

- NERC and Regional Entities will not monitor nor hold those not in the Compliance Registry responsible for compliance with the Reliability Standards. An entity which is not initially placed on the Compliance Registry, but which is identified subsequently as having a material reliability impact, will be added to the Compliance Registry. Such entity will not be subject to a sanction or Penalty by NERC or the Regional Entity for actions or inactions prior to being placed on the Compliance Registry, but may be required to comply with a Remedial Action Directive or Mitigation Plan in order to become compliant with applicable Reliability Standards. After such entity has been placed on the Compliance Registry, it shall be responsible for complying with Reliability Standards and may be subject to sanctions or Penalties as well as any Remedial Action Directives and Mitigation Plans required by the Regional Entities or NERC for future violations, including any failure to follow a Remedial Action Directive or Mitigation Plan to become compliant with Reliability Standards.
- Required compliance by a given organization with the Reliability Standards will begin the later of (i) inclusion of that organization in the Compliance Registry and (ii) approval by the Applicable Governmental Authority of mandatory Reliability Standards applicable to the Registered Entity.

Entities responsible for funding NERC and the Regional Entities have been identified in the budget documents filed with FERC. Presence on or absence from the Compliance Registry has no bearing on an entity's independent responsibility for funding NERC and the Regional Entities.

Background

In 2005, NERC and the Regional Entities conducted a voluntary organization registration program limited to Balancing Authorities, Planning Authorities, regional reliability organizations, Reliability Coordinators, Transmission Operators, and Transmission Planners. The list of the entities that were registered constitutes what NERC considered at that time as its Compliance Registry.

NERC has recently initiated a broader program to identify additional organizations potentially eligible to be included in the Compliance Registry and to confirm the information of organizations currently on file. NERC believes this is a prudent activity at this time because:

- As of July 20, 2006, NERC was certified as the ERO created for the U.S. by the Energy Policy Act of 2005 (EPAct) and FERC Order 672. NERC has also filed with Canadian authorities for similar recognition in their respective jurisdictions.
- FERC's Order 672 directs that owners, operators and users of the Bulk Power System shall be registered with the ERO and the appropriate Regional Entities.
- As the ERO, NERC has filed its current Reliability Standards with FERC and with Canadian authorities. As accepted and approved by FERC and appropriate Canadian authorities, the Reliability Standards are no longer voluntary, and organizations that do

not fully comply with them may face Penalties or other sanctions determined and levied by NERC or the Regional Entities.

- NERC’s Reliability Standards include compliance Requirements for additional reliability function types beyond the six types registered by earlier registration programs.
- Based on selection as the ERO, the extension and expansion of NERC’s current Registration program³ is the means by which NERC and the Regional Entities will plan, manage and execute Reliability Standard compliance oversight of owners, operators, and users of the Bulk Power System.
- Organizations listed in the Compliance Registry are subject to NERC’s and the Regional Entities’ Compliance Monitoring and Enforcement Programs.

Statement of Issue

As the ERO, NERC intends to comprehensively and thoroughly protect the reliability of the grid. To support this goal NERC will include in its Compliance Registry each entity that NERC concludes can materially impact the reliability of the Bulk Power System. However, the potential costs and effort of ensuring that every organization potentially within the scope of “owner, operator, and user of the Bulk Power System” becomes registered while ignoring their impact upon reliability, would be disproportionate to the improvement in reliability that would reasonably be anticipated from doing so.

NERC wishes to identify as many organizations as possible that may need to be listed in its Compliance Registry. Identifying these organizations is necessary and prudent at this time for the purpose of determining resource needs, both at the NERC and Regional Entity level, and to begin the process of communication with these entities regarding their potential responsibilities and obligations. NERC and the Regional Entities believe that primary candidate entities can be identified at this time, while other entities can be identified later, as and when needed. Selection principles and criteria for the identification of these initial entities are required. This list will become the “Initial Non-binding Organization Registration List”. With FERC having made the approved Reliability Standards enforceable, this list becomes the NERC Compliance Registry.

Resolution

NERC and the Regional Entities have identified two principles they believe are key to the entity selection process. These are:

1. There needs to be consistency between Regions and across the continent with respect to which entities are registered, and;
2. Any entity reasonably deemed material to the reliability of the Bulk Bower System will be registered, irrespective of other considerations.

To address the second principle the Regional Entities, working with NERC, will identify and register any entity they deem material to the reliability of the Bulk Power System.

³ See: NERC ERO Application; Exhibit C; Section 500 – Organization Registration and Certification.

In order to promote consistency, NERC and the Regional Entities intend to use the following criteria as the basis for determining whether particular entities should be identified as candidates for Registration. All organizations meeting or exceeding the criteria will be identified as candidates.

The following four groups of criteria (Sections I-IV) plus the statements in Section V will provide guidance regarding an entity's Registration status:

- Section I determines if the entity is an owner, operator, or user of the Bulk Power System and, hence, a candidate for organization Registration.
- Section II uses NERC's current functional type definitions to provide an initial determination of the functional types for which the entities identified in Section I should be considered for Registration.
- Section III lists the criteria regarding smaller entities; these criteria can be used to forego the Registration of entities that were selected to be considered for Registration pursuant to Sections I and II and, if circumstances change, for later removing entities from the Registration list that no longer meet the relevant criteria.
- Section IV — additional criteria for joint Registration. Joint Registration criteria may be used by joint action agencies, generation and transmission cooperatives and other entities which agree upon a clear division of compliance responsibility for Reliability Standards by written agreement. Pursuant to FERC's directive in paragraph 107 of Order No. 693, rules pertaining to joint Registration and Joint Registration Organizations will now be found in Sections 501 and 507 of the NERC Rules of Procedure.

I. Entities that use, own or operate Elements of the Bulk Electric System as established by NERC's approved definition of Bulk Electric System below are (i) owners, operators, and users of the Bulk Power System and (ii) candidates for Registration:

“Bulk Electric System” or “BES” means unless modified by the lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy.

Inclusions:

- ***I1*** - Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded under Exclusion E1 or E3.
- ***I2*** - Generating resource(s) with gross individual nameplate rating greater than 20 MVA or gross plant/facility aggregate nameplate rating greater than 75 MVA including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above.
- ***I3*** - Blackstart Resources identified in the Transmission Operator's restoration plan.
- ***I4*** - Dispersed power producing resources with aggregate capacity greater than 75 MVA (gross aggregate nameplate rating) utilizing a system designed primarily for aggregating capacity, connected at a common point at a voltage of 100 kV or above.

- **I5** –Static or dynamic devices (excluding generators) dedicated to supplying or absorbing Reactive Power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer that is designated in Inclusion II.

Exclusions:

- **E1** - Radial systems: A group of contiguous transmission Elements that emanates from a single point of connection of 100 kV or higher and:
 - a) Only serves Load. Or,
 - b) Only includes generation resources, not identified in Inclusion I3, with an aggregate capacity less than or equal to 75 MVA (gross nameplate rating). Or,
 - c) Where the radial system serves Load and includes generation resources, not identified in Inclusion I3, with an aggregate capacity of non-retail generation less than or equal to 75 MVA (gross nameplate rating).Note – A normally open switching device between radial systems, as depicted on prints or one-line diagrams for example, does not affect this exclusion.
- **E2** - A generating unit or multiple generating units on the customer's side of the retail meter that serve all or part of the retail Load with electric energy if: (i) the net capacity provided to the BES does not exceed 75 MVA, and (ii) standby, back-up, and maintenance power services are provided to the generating unit or multiple generating units or to the retail Load by a Balancing Authority, or provided pursuant to a binding obligation with a Generator Owner or Generator Operator, or under terms approved by the applicable regulatory authority.
- **E3** - Local networks (LN): A group of contiguous transmission Elements operated at or above 100 kV but less than 300 kV that distribute power to Load rather than transfer bulk power across the interconnected system. LN's emanate from multiple points of connection at 100 kV or higher to improve the level of service to retail customer Load and not to accommodate bulk power transfer across the interconnected system. The LN is characterized by all of the following:
 - a) Limits on connected generation: The LN and its underlying Elements do not include generation resources identified in Inclusion I3 and do not have an aggregate capacity of non-retail generation greater than 75 MVA (gross nameplate rating);
 - b) Power flows only into the LN and the LN does not transfer energy originating outside the LN for delivery through the LN; and
 - c) Not part of a Flowgate or transfer path: The LN does not contain a monitored Facility of a permanent Flowgate in the Eastern Interconnection, a major transfer path within the Western Interconnection, or a comparable monitored Facility in the ERCOT or Quebec Interconnections, and is not a monitored Facility included in an Interconnection Reliability Operating Limit (IROL).
- **E4** – Reactive Power devices owned and operated by the retail customer solely for its own use.

Note - Elements may be included or excluded on a case-by-case basis through the Rules of Procedure exception process.

- II. Entities identified in Part I above will be categorized as Registration candidates who may be subject to Registration under one or more appropriate Functional Entity types based on a comparison of the functions the entity normally performs against the following function type definitions:

Function Type	Acronym	Definition/Discussion
Balancing Authority	BA	The responsible entity that integrates resource plans ahead of time, maintains Load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real-time.
Distribution Provider	DP	Provides and operates the “wires” between the transmission system and the end-use customer. For those end-use customers who are served at transmission voltages, the Transmission Owner also serves as the Distribution Provider. Thus, the Distribution Provider is not defined by a specific voltage, but rather as performing the distribution function at any voltage.
Generator Operator	GOP	The entity that operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services.
Generator Owner	GO	Entity that owns and maintains generating units.
Interchange Authority	IA	The responsible entity that authorizes implementation of valid and balanced Interchange Schedules between Balancing Authority Areas, and ensures communication of Interchange information for reliability assessment purposes.
Load-Serving Entity	LSE	Secures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.
Planning Authority	PA	The responsible entity that coordinates and integrates transmission Facilities and service plans, resource plans, and Protection Systems.

Function Type	Acronym	Definition/Discussion
Purchasing-Selling Entity	PSE	The entity that purchases, or sells, and takes title to, energy, capacity, and Interconnected Operations Services. PSE may be affiliated or unaffiliated merchants and may or may not own generating Facilities.
Reliability Coordinator	RC	The entity that is the highest level of authority who is responsible for the Reliable Operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator's vision.
Reserve Sharing Group	RSG	A group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating reserves required for each Balancing Authority's use in recovering from contingencies within the group. Scheduling energy from an Adjacent Balancing Authority to aid recovery need not constitute reserve sharing provided the transaction is ramped in over a period the supplying party could reasonably be expected to load generation in (e.g., ten minutes). If the transaction is ramped in quicker, (e.g., between zero and ten minutes), then, for the purposes of disturbance control performance, the areas become a Reserve Sharing Group.
Resource Planner	RP	The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific Loads (customer demand and energy requirements) within a Planning Authority area.
Transmission Owner	TO	The entity that owns and maintains transmission Facilities.
Transmission Operator	TOP	The entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission Facilities.

Function Type	Acronym	Definition/Discussion
Transmission Planner	TP	The entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority area.
Transmission Service Provider	TSP	The entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable Transmission Service agreements.

III. Entities identified in Part II above as being subject to Registration as an LSE, DP, GO, GOP, TO, or TOP should be excluded from the Compliance Registry for these functions if they do not meet any of the criteria listed below:

III (a) Load-Serving Entity:

- III.a.1 Load-Serving Entity peak Load is > 25 MW and is directly connected to the Bulk Power (>100 kV) System, or;
- III.a.2 Load-Serving Entity is designated as the responsible entity for Facilities that are part of a required underfrequency Load shedding (UFLS) program designed, installed, and operated for the protection of the Bulk Power System, or;
- III.a.3 Load-Serving Entity is designated as the responsible entity for Facilities that are part of a required undervoltage Load shedding (UVLS) program designed, installed, and operated for the protection of the Bulk Power System.
[Exclusion: A Load-Serving Entity will not be registered based on these criteria if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a Load-Serving Entity, Balancing Authority, Transmission Operator, generation and transmission cooperative or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.]
- III.a.4 Distribution Providers registered under the criteria in III.b.1 or III.b.2 will be registered as a Load Serving Entity (LSE) for all Load directly connected to their distribution facilities.
[Exclusion: A Distribution Provider will not be registered based on this criterion if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has

registered for the appropriate function for the transferred responsibilities, such as a Load-Serving Entity, Balancing Authority, Transmission Operator, generation and transmission cooperative, or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.]

III(b) Distribution Provider:

- III.b.1 Distribution Provider system serving >25 MW of peak Load that is directly connected to the Bulk Power System.

[Exclusion: A Distribution Provider will not be registered based on this criterion if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a Load-Serving Entity, Balancing Authority, Transmission Operator, generation and transmission cooperative, or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.] or;

- III.b.2 Distribution Provider is the responsible entity that owns, controls, or operates Facilities that are part of any of the following Protection Systems or programs designed, installed, and operated for the protection of the Bulk Power System:

- a required UFLS program.
- a required UVLS program.
- a required Special Protection System.
- a required transmission Protection System.

[Exclusion: A Distribution Provider will not be registered based on these criteria if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a Load-Serving Entity, Balancing Authority, Transmission Operator, generation and transmission cooperative, or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.]

III(c) Generator Owner/Operator:

- III.c.1 Individual generating unit > 20 MVA (gross nameplate rating) and is directly connected to the Bulk Power System, or;

- III.c.2 Generating plant/facility > 75 MVA (gross aggregate nameplate rating) or when the entity has responsibility for any facility consisting of one or more units that are connected to the Bulk Power System at a common bus with total generation above 75 MVA gross nameplate rating, or;

- III.c.3 Any generator, regardless of size, that is a Blackstart Resource material to and designated as part of a Transmission Operator entity's restoration plan, or;
- III.c.4 Any generator, regardless of size, that is material to the reliability of the Bulk Power System.

[Exclusions:

A Generator Owner/Operator will not be registered based on these criteria if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a Load-Serving Entity, generation and transmission cooperative or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.

As a general matter, a customer-owned or operated generator/generation that serves all or part of retail Load with electric energy on the customer's side of the retail meter may be excluded as a candidate for Registration based on these criteria if (i) the net capacity provided to the Bulk Power System does not exceed the criteria above or the Regional Entity otherwise determines the generator is not material to the Bulk Power System and (ii) standby, back-up and maintenance power services are provided to the generator or to the retail Load pursuant to a binding obligation with another Generator Owner/Operator or under terms approved by the local regulatory authority or the Federal Energy Regulatory Commission, as applicable.]

III(d) Transmission Owner/Operator:

- III.d.1 An entity that owns/operates an integrated transmission Element associated with the Bulk Power System 100 kV and above, or lower voltage as defined by the Regional Entity necessary to provide for the Reliable Operation of the interconnected transmission grid; or
- III.d.2 An entity that owns/operates a transmission Element below 100 kV associated with a Facility that is included on a critical Facilities list that is defined by the Regional Entity.

[Exclusion: A Transmission Owner/Operator will not be registered based on these criteria if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a Load-Serving Entity, generation and transmission cooperative or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.

IV. Joint Registration Organization and applicable Member Registration.

Pursuant to FERC's directive in paragraph 107 of Order No. 693, NERC's rules pertaining to joint Registrations and Joint Registration Organizations are now found in Section 501 and 507 of the NERC Rules of Procedure.

- V. 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 provided in Section 500 of NERC's Rules of Procedure and as described in Note 3 below.

Notes to the above Criteria

1. The above are general criteria only. The Regional Entity considering Registration of an organization not meeting (e.g., smaller in size than) the criteria may propose Registration of that organization if the Regional Entity believes and can reasonably demonstrate⁴ that the organization is a Bulk Power System owner, or operates, or uses Bulk Power System assets, and is material to the reliability of the Bulk Power System. Similarly, the Regional Entity may exclude an organization that meets the criteria described above as a candidate for Registration if it believes and can reasonably demonstrate to NERC that the Bulk Power System owner, operator, or user does not have a material impact on the reliability of the Bulk Power System.
2. An organization not identified using the criteria, but wishing to be registered, may request that it be registered. For further information refer to: NERC Rules of Procedure, Section 500 – Organization Registration and Certification; Part 1.3.
3. An organization may challenge its Registration within the Compliance Registry. NERC or the Regional Entity will provide the organization with all information necessary to timely challenge that determination including notice of the deadline for contesting the determination and the relevant procedures to be followed as described in the NERC Rules of Procedure; Section 500 – Organization Registration and Certification.
4. If an entity is part of a class of entities excluded based on the criteria above as individually being unlikely to have a material impact on the reliability of the Bulk Power System, but that in aggregate have been demonstrated to have such an impact it may be registered for applicable Reliability Standards and Requirements irrespective of other considerations.

⁴ The reasonableness of any such demonstration will be subject to review and remand by NERC itself, or by any Applicable Governmental Authority.