

# NERC

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

## **Rules of Procedure**

Effective: July 1, 2016

**TABLE OF CONTENTS**

**SECTION 100 — APPLICABILITY OF RULES OF PROCEDURE..... 1**

**SECTION 200 — DEFINITIONS OF TERMS ..... 2**

**SECTION 300 — RELIABILITY STANDARDS DEVELOPMENT ..... 3**

301. General ..... 3

302. Essential Attributes for Technically Excellent Reliability Standards..... 3

303. Relationship between Reliability Standards and Competition ..... 5

304. Essential Principles for the Development of Reliability Standards ..... 5

305. Registered Ballot Body..... 6

306. Standards Committee..... 8

307. Standards Process Management ..... 8

308. Steps in the Development of Reliability Standards ..... 8

309. Filing of Reliability Standards for Approval by Applicable Governmental Authorities..... 9

310. Annual Reliability Standards Development Plan ..... 10

311. Regional Entity Standards Development Procedures ..... 10

312. Regional Reliability Standards ..... 12

313. Other Regional Criteria, Guides, Procedures, Agreements, Etc..... 15

314. Conflicts with Statutes, Regulations, and Orders ..... 16

315. Revisions to NERC Standard Processes Manual..... 16

316. Accreditation ..... 16

317. Periodic Review of Reliability Standards..... 16

318. Coordination with the North American Energy Standards Board ..... 17

319. Archived Standards Information ..... 17

320. Procedure for Developing and Approving Violation Risk Factors and Violation Severity Levels ..... 17

321. Special Rule to Address Certain Regulatory Directives..... 18

**SECTION 400 — COMPLIANCE ENFORCEMENT ..... 22**

401. Scope of the NERC Compliance Monitoring and Enforcement Program ..... 22

402. NERC Oversight of the Regional Entity Compliance Monitoring and Enforcement Programs 25

403. Required Attributes of Regional Entity Compliance Monitoring and Enforcement Programs .29

404. NERC Monitoring of Compliance for Regional Entities or Bulk Power Owners, Operator, or Users ..... 36

405. Monitoring of Reliability Standards and Other Requirements Applicable to NERC..... 37

406. Independent Audits of the NERC Compliance Monitoring and Enforcement Program ..... 37

407. Penalties, Sanctions, and Remedial Action Directives ..... 38

408. Review of NERC Decisions ..... 38

409. Appeals from Final Decisions of Regional Entity Hearing Bodies ..... 40

410. Hold Harmless ..... 41

411. Requests for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Reliability Standards..... 41

412. Certification of Questions from Regional Entity Hearing Bodies for Decision by the NERC Board of Trustees Compliance Committee..... 41

413. Review and Processing of Regional Entity Hearing Body Final Decisions that Are Not Appealed..... 42

414. Appeals of Decisions of Regional Entity Hearing Bodies Granting or Denying Motions to Intervene in Regional Entity Hearing Body Proceedings ..... 42

<b>SECTION 500 — ORGANIZATION REGISTRATION AND CERTIFICATION .....</b>	<b>45</b>
501. Scope of the Organization Registration and Organization Certification Programs .....	45
502. Organization Registration and Organization Certification Program Requirements .....	49
503. Regional Entity Implementation of Organization Registration and Organization Certification Program Requirements .....	51
504. Appeals .....	52
505. Program Maintenance.....	52
506. Independent Audit of NERC Organization Registration and Organization Certification Program .....	52
507. Provisions Relating to Joint Registration Organizations (JRO) .....	53
508. Provisions Relating to Coordinated Functional Registration (CFR) Entities .....	54
509. Exceptions to the Definition of the Bulk Electric System .....	55
<b>SECTION 600 — PERSONNEL CERTIFICATION .....</b>	<b>56</b>
601. Scope of Personnel Certification .....	56
602. Structure of ERO Personnel Certification Program.....	56
603. Examination and Maintenance of NERC System Operator Certification Credentials .....	57
604. Dispute Resolution Process .....	58
605. Disciplinary Action .....	59
606. Candidate Testing Mechanisms .....	61
607. Public Information About the Personnel Certification Program .....	62
608. Responsibilities to Applicants for Certification or Re-Certification .....	62
609. Responsibilities to the Public and to Employers of Certified Practitioners.....	63
<b>SECTION 700 — RELIABILITY READINESS EVALUATION AND IMPROVEMENT AND FORMATION OF SECTOR FORUMS.....</b>	<b>64</b>
701. Confidentiality Requirements for Readiness Evaluations and Evaluation Team Members .....	64
702. Formation of Sector Forum .....	64
<b>SECTION 800 — RELIABILITY ASSESSMENT AND PERFORMANCE ANALYSIS.....</b>	<b>65</b>
801. Objectives of the Reliability Assessment and Performance Analysis Program .....	65
802. Scope of the Reliability Assessment Program.....	65
803. Reliability Assessment Reports .....	66
804. Reliability Assessment Data and Information Requirements .....	67
805. Reliability Assessment Process .....	68
806. Scope of the Reliability Performance and Analysis Program.....	70
807. Analysis of Major Events .....	70
808. Analysis of Off-Normal Occurrences, Bulk Power System Performance, and Bulk Power System Vulnerabilities.....	71
809. Reliability Benchmarking.....	72
810. Information Exchange and Issuance of NERC Advisories, Recommendations and Essential Actions.....	72
811. Equipment Performance Data.....	73
<b>SECTION 900 — TRAINING AND EDUCATION .....</b>	<b>74</b>
901. Scope of the Training and Education Program.....	74
902. Continuing Education Program .....	74
<b>SECTION 1000 — SITUATION AWARENESS AND INFRASTRUCTURE SECURITY .....</b>	<b>76</b>
1001. Situation Awareness .....	76
1002. Reliability Support Services .....	76

1003.	Infrastructure Security Program .....	77
<b>SECTION 1100 — ANNUAL NERC BUSINESS PLANS AND BUDGETS.....</b>		<b>79</b>
1101.	Scope of Business Plans and Budgets .....	79
1102.	NERC Funding and Cost Allocation .....	79
1103.	NERC Budget Development .....	79
1104.	Submittal of Regional Entity Budgets to NERC .....	80
1105.	Submittal of NERC and Regional Entity Budgets to Governmental Authorities for Approval	80
1106.	NERC and Regional Entity Billing and Collections.....	81
1107.	Penalty Applications.....	82
1108.	Special Assessments .....	83
<b>SECTION 1200 — REGIONAL DELEGATION AGREEMENTS .....</b>		<b>84</b>
1201.	Pro Forma Regional Delegation Agreement.....	84
1202.	Regional Entity Essential Requirements .....	84
1203.	Negotiation of Regional Delegation Agreements.....	84
1204.	Conformance to Rules and Terms of Regional Delegation Agreements.....	84
1205.	Sub-delegation .....	84
1206.	Nonconformance to Rules or Terms of Regional Delegation Agreement.....	84
1207.	Regional Entity Audits .....	85
1208.	Process for Considering Registered Entity Requests to Transfer to Another Regional Entity..	85
<b>SECTION 1300 — COMMITTEES .....</b>		<b>88</b>
1301.	Establishing Standing Committees .....	88
1302.	Committee Membership .....	88
1303.	Procedures for Appointing Committee Members.....	88
1304.	Procedures for Conduct of Committee Business .....	88
1305.	Committee Subgroups .....	89
<b>SECTION 1400 — AMENDMENTS TO THE NERC RULES OF PROCEDURE .....</b>		<b>90</b>
1401.	Proposals for Amendment or Repeal of Rules of Procedure .....	90
1402.	Approval of Amendment or Repeal of Rules of Procedure.....	90
<b>SECTION 1500 — CONFIDENTIAL INFORMATION.....</b>		<b>91</b>
1501.	Definitions .....	91
1502.	Protection of Confidential Information .....	91
1503.	Requests for Information .....	92
1504.	Employees, Contractors and Agents.....	94
1505.	Provision of Information to FERC and Other Governmental Authorities.....	94
1506.	Permitted Disclosures .....	94
1507.	Remedies for Improper Disclosure.....	94
<b>SECTION 1600 — REQUESTS FOR DATA OR INFORMATION .....</b>		<b>96</b>
1601.	Scope of a NERC or Regional Entity Request for Data or Information.....	96
1602.	Procedure for Authorizing a NERC Request for Data or Information .....	96
1603.	Owners, Operators, and Users to Comply .....	97
1604.	Requests by Regional Entity for Data or Information .....	97
1605.	Confidentiality .....	98
1606.	Expedited Procedures for Requesting Time-Sensitive Data or Information .....	98

**SECTION 1700 — CHALLENGES TO DETERMINATIONS ..... 100**

1701. Scope of Authority ..... 100

1702. Challenges to Determinations by Planning Coordinators Under Reliability Standard PRC-023  
..... 100

1703. Challenges to NERC Determinations of BES Exception Requests Under Section 509 ..... 102

## **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 classes<sup>1</sup> include: Reliability Coordinators, Balancing Authorities, Transmission Operators, Transmission Owners, Generator Operators, Generator Owners, Transmission Service Providers, market operators, Planning Authorities, Transmission Planners, Resource Planners, 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.

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<sup>1</sup> 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. Periodic Review of Reliability Standards**

NERC shall complete a periodic review of each NERC Reliability Standard in accordance with the NERC *Standard Processes Manual*. The standards process manager shall be responsible for administration of the periodic 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 31<sup>st</sup> 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 America 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. **Risk Elements** — NERC, with input from the Regional Entities, stakeholders, and regulators, shall at least annually identify risk elements to prioritize risks to the reliability of the Bulk Power System. These risk elements and related NERC Reliability Standards and Requirements are to be considered for compliance oversight in the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan. NERC identifies the risk elements using data including, but not limited to: compliance findings; event analysis experience; data analysis; and the expert judgment of NERC and Regional Entity staff, committees, and subcommittees. NERC uses these risk elements to identify and prioritize interconnection and continent-wide risks to the reliability of the Bulk Power System. These identified risks, as well as risks to the reliability of the Bulk Power System identified by Regional Entities for their footprint, represent the

focus for monitoring activities in the upcoming year, and become inputs for developing oversight plans for individual Registered Entities. Compliance is required, and NERC and the Regional Entities have authority to monitor compliance, with all applicable NERC Reliability Standards whether or not they are identified as areas of focus to be considered for compliance oversight in the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan or are included in a Regional Entity's oversight plan for the Registered Entity.

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. As required by an Applicable Governmental Authority, NERC will also post information concerning noncompliance disposed of as Compliance Exceptions, subject to Section 1500 of these Rules of Procedures.

- 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 Implementation Plan Content** — All approved Reliability Standards shall be included in the Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan 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 risk elements and related Reliability Standards and Requirements to be considered by the Regional Entity in a given year in developing oversight plans for individual Registered Entities.
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, includes details on regional risk assessment processes and results, Reliability Standards and Requirements associated with regional risk assessment results, the methods to be used by the Regional Entity for reporting, monitoring, evaluating, and assessing performance criteria and the Regional Entity's Annual Audit Plan. 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, with a copy to the Participant filing the notice. 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 entities<sup>2</sup> 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.
  - 1.6 With respect to: (i) entities to be registered for the first time; (ii) currently-registered entities or (iii) previously-registered entities, for which registration status changes are sought, including availability and composition of a sub-set list of applicable Reliability Standards (which specifies the Reliability Standards and may specify Requirements/sub-Requirements), the registration process steps in Section III of **Appendix 5A** apply.
  - 1.7 NERC shall establish a NERC-led, centralized review panel, comprised of a NERC lead with Regional Entity participants, in accordance with **Appendix 5A**, *Organization Registration and Organization Certification Manual*, Section III.D and **Appendix 5B**, *Statement of Compliance Registry Criteria*.
2. **Entity Certification** — NERC shall provide for Certification of all entities with primary reliability responsibilities requiring Certification. This includes those

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<sup>2</sup> 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.

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.
- 2.5 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 and cyber assets, assess security threats, identify risk assessment methodologies, and assess effectiveness of physical and cyber protection measures.
- 2.4 NERC shall enhance and maintain the Bulk Power System critical spare transformer program, encourage increased participation by asset owners, and continue to assess the need to expand this program to include other critical Bulk Power System equipment.
- 2.5 NERC shall support implementation of the 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 Entities<sup>3</sup> 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

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<sup>3</sup> 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.

Entity will collect directly from the Load-Serving Entities or as otherwise provided by agreement and submit funds to NERC. Alternatively, a load-serving entity may pay its allocated ERO costs through a Regional Entity managed collection mechanism.

6. NERC shall set a minimum threshold limit on the billing of small LSEs to minimize the administrative burden of collection.
7. NERC shall pursue any non-payments and shall request assistance from Applicable Governmental Authorities as necessary to secure collection.
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.

# NERC

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

## **NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

### **DEFINITIONS USED IN THE RULES OF PROCEDURE**

#### **APPENDIX 2 TO THE RULES OF PROCEDURE**

**Effective: April 1, 2016**

## 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 whose Balancing Authority Area is interconnected with 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 or a Requirement Part of a CIP Standard that (i) expressly provides that compliance with the terms of the Requirement or Requirement Part is required where technically feasible 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 Cyber Asset” means a Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, misoperation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System. Redundancy of affected Facilities, systems, and equipment shall not be considered when determining adverse impact. Each BES Cyber Asset is included in one or more BES Cyber Systems.\*\*

“BES Cyber System” means one or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks for a functional entity.\*\*

“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 by application of Exclusion E1 or E3.
- **I2** - Generating resource(s) including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above with:
  - a) Gross individual nameplate rating greater than 20 MVA. Or,
  - b) Gross plant/facility aggregate nameplate rating greater than 75 MVA.
- **I3** - Blackstart Resources identified in the Transmission Operator's restoration plan.
- **I4** - Dispersed power producing resources that aggregate to a total capacity greater than 75 MVA (gross nameplate rating), and that are connected through a system designed primarily for delivering such capacity to a common point of connection at a voltage of 100 kV or above. Thus, the facilities designated as BES are:
  - a) The individual resources, and
  - b) The system designed primarily for delivering capacity from the point where those resources aggregate to greater than 75 MVA to a common point of connection 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 unless excluded by application of Exclusion E4.

**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 Inclusions I2, I3, or I4, 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 Inclusions I2, I3 or I4, with an aggregate capacity of non-retail generation less than or equal to 75 MVA (gross nameplate rating).

Note 1 – A normally open switching device between radial systems, as depicted on prints or one-line diagrams for example, does not affect this exclusion.

Note 2 – The presence of a contiguous loop, operated at a voltage level of 50 kV or less, between configurations being considered as radial systems, 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 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 customers 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 Inclusions I2, I3, or I4 and do not have an aggregate capacity of non-retail generation greater than 75 MVA (gross nameplate rating);
  - b) Real 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 any part 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 installed for the sole benefit of a retail customer(s).

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) (A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and  
(B) electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy [++]. (Note that the terms “Bulk-Power System” or “Bulk Power System” shall have the same meaning.)
- (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.

“CIP Senior Manager” means a single senior management official with overall authority and responsibility for leading and managing implementation of and continuing adherence to the requirements within the NERC CIP Standards, CIP-002 through CIP-011.\*\*

“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 Exception” means a noncompliance that is addressed in Section 3A.1 of Appendix 4C, and is not pursued through an enforcement action under Section 5.0 of Appendix 4C to these Rules of Procedure by a Compliance Enforcement Authority.

“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 any BES Cyber Asset, BES Cyber System, Protected Cyber Asset, Electronic Access Control or Monitoring System, or Physical Access Control System 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 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-011, CIP-014, and any other Reliability Standard included in the Critical Infrastructure Protection group of Reliability Standards that is adopted by the NERC Board of Trustees according to the NERC *Bylaws* and *Rules of Procedure* and approved by Applicable Governmental Authorities.

“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, including hardware, software, and data in those devices.\*\*

“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.

“Deactivation,” as used in Appendix 5A with respect to the Registration processes, refers to removal of an entity from the NCR for a specific functional category. As a result of deactivation, the entity is no longer subject to any prospective compliance obligations with respect to Reliability Standards applicable to that functional category.

“Delegate” means a person to whom the CIP Senior Manager of a Responsible Entity has delegated authority pursuant to Requirement R4 of CIP Standard CIP-003 (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.

“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.

“Electronic Access Control or Monitoring Systems” means Cyber Assets that perform electronic access control or electronic access monitoring of the Electronic Security Perimeter(s) or BES Cyber Systems. This includes Intermediate Systems.\*\*

“Electronic Access Point” means a Cyber Asset interface on an Electronic Security Perimeter that allows routable communication between Cyber Assets outside an Electronic Security Perimeter and Cyber Assets inside an Electronic Security Perimeter.\*\*

“Electronic Security Perimeter” means the logical border surrounding a network to which BES Cyber Systems are connected using a routable protocol.\*\*

“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.

“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*.

“Find, Fix, Track and Report” or “FFT” means a streamlined process, addressed in Section 5.2A of Appendix 4C, to resolve minimal or moderate risk, remediated Possible Violations that are not assessed a financial penalty.

“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 Facility(ies) and performs the functions of supplying energy and Interconnected Operations Services.

“Generator Owner” means an entity that owns and maintains generating Facility(ies).

“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.

“Inherent Risk Assessment” or “IRA” means a review by the Compliance Enforcement Authority of potential risks posed by an individual Registered Entity to the reliability of the Bulk Power System. An IRA considers factors such as, but is not limited to, assets, system, geography, interconnectivity, prior compliance history and factors unique to the Registered Entity. The results of an entity-specific IRA may result in the scope of compliance monitoring

for a particular Registered Entity to include more, fewer, or different Reliability Standards than those contained in the annual Implementation Plans.

“Interactive Remote Access” means user-initiated access by a person employing a remote access client or other remote access technology using a routable protocol. Remote access originates from a Cyber Asset that is not an Intermediate System and not located within any of the Responsible Entity’s Electronic Security Perimeter(s) or at a defined Electronic Access Point. Remote access may be initiated from: 1) Cyber Assets used or owned by the Responsible Entity, 2) Cyber Assets used or owned by employees, and 3) Cyber Assets used or owned by vendors, contractors, or consultants. Interactive remote access does not include system-to-system process communications.\*\*

“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 communication 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.++ When capitalized, any one of the four major electric system networks in North America: Eastern, Western, ERCOT and Quebec.\*\*

“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.\*\*



“Intermediate System” means a Cyber Asset or collection of Cyber Assets performing access control to restrict Interactive Remote Access to only authorized users. The Intermediate System must not be located inside the Electronic Security Perimeter.\*\*

“Internal Control Evaluation” or “ICE” means a review by the Compliance Enforcement Authority of a Registered Entity’s internal controls. The ICE may further refine the compliance oversight plan, including the scope of an audit, the type and application of compliance monitoring tools, the depth and breadth of a particular area of review.

“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-use 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.

“Material Change” means a change in facts that modifies Required Information in connection with an approved TFE. Examples of a Material Change could include, but are not limited to an increase in device count (but not a decrease), change in compensating measures, change in statement of basis for approval for the TFE, a change in the TFE Expiration Date, or a Responsible Entity achieving Strict Compliance with the Applicable Requirement.

“Material Change Report” means a report submitted by the Responsible Entity to the Regional Entity in the event there is a Material Change to the facts underlying an approved TFE pursuant to Section 4.0 of Appendix 4D.

“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 Implementation Plan that identifies the risk elements to prioritize risks to the Bulk Power System. These risk elements and related NERC Reliability Standards and Requirements become inputs for Regional Entities in developing their Regional Compliance Monitoring and Enforcement Program Implementation Plans and the compliance oversight for individual Registered Entities. The NERC Implementation Plan may be updated more often than annually as needed.

“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.

“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.\*\*

“Physical Access Control Systems” means Cyber Assets that control, alert, or log access to the Physical Security Perimeter(s), exclusive of locally mounted hardware or devices at the Physical Security Perimeter such as motion sensors, electronic lock control mechanisms, and badge readers.\*\*

“Physical Security Perimeter” means the physical border surrounding locations in which BES Cyber Assets, BES Cyber Systems, or Electronic Access Control or Monitoring Systems reside, and for which access is controlled.\*\*

“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 Cyber Asset” means one or more Cyber Assets connected using a routable protocol within or on an Electronic Security Perimeter that is not part of the highest impact BES Cyber System within the same Electronic Security Perimeter. The impact rating of Protected Cyber Assets is equal to the highest rated BES Cyber System in the same Electronic Security Perimeter.\*\*

“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 station 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.\*\*

“Reactivation” refers to re-registration pursuant to the NERC Rules of Procedure Section 500 and Appendices 5A and 5B of an entity to the NCR for a specific functional category or the revocation of, or additions to, a sub-set list of Reliability Standards (which specifies Reliability Standards and may specify Requirements/sub-Requirements) that has been granted to an entity. Reactivation may be initiated by NERC, a Regional Entity or an entity with respect to such entity’s own functional categories or sub-set list of Reliability Standards (which specifies Reliability Standards and may specify Requirements/sub-Requirements).

“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 Regional Entity plan, submitted 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 Implementation Plan, includes (1) details on regional risk assessment processes and results; (2) Reliability Standards and Requirements associated with regional risk assessment results; (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria; 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, approved by the United States Federal Energy Regulatory Commission under Section 215 of the Federal Power Act, or approved or recognized by an applicable governmental authority in other jurisdictions, to provide for Reliable Operation of the Bulk Power System. The term includes requirements for the operation of existing Bulk Power System facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for Reliable Operation of the Bulk Power System, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.++ (In certain contexts, this term may also refer to a “Reliability Standard” that is in the process of being developed, or not yet approved or recognized by FERC or an applicable governmental authority in other jurisdictions.)

“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 cybersecurity 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.

“Requirement Part” means a component of a Requirement that is designated by a decimal number (e.g., Requirement R1 could have Requirement Parts 1.1, 1.2 and 1.3).

“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 any Requirement, or Requirement Part.

“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-Logging” means a process by which Registered Entities found to be eligible by a Compliance Enforcement Authority, after a formal review of internal controls, record possible noncompliance on a log, in accordance with Section 3.5A of Appendix 4C, in lieu of individually submitted Self-Reports of each possible noncompliance.

“Self-Report” means a report by a Registered Entity stating that the Registered Entity believes it has, or may have, violated a Reliability Standard.

“Sink Balancing Authority” means the Balancing Authority in which the load (sink) is located for an Interchange Transaction and any resulting Interchange Schedule.\*\*

“Source Balancing Authority” means the Balancing Authority in which the generation (source) is located for an Interchange Transaction and for any resulting Interchange Schedule.\*\*

“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. System Operating Limits are based upon certain operating criteria. These include, but are not limited to:

- facility ratings (applicable pre- and post-contingency equipment ratings or facility ratings)
- transient stability ratings (applicable pre- and post-contingency stability limits)
- voltage stability ratings (applicable pre- and post-contingency voltage stability)
- system voltage limits (applicable pre- and post-contingency voltage limits).\*\*

“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 Expiration Date” means the date on which an approved TFE expires.

“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.

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

“Transmission” means an interconnected group of lines and associated equipment for the movement or transfer of electric energy between points of supply and points at which it is transformed for delivery to customers or is delivered to other electric systems.\*\*

“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 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.\*\*

## **Appendix 3A**

# **Standard Processes Manual**

**Effective: June 26, 2013**

The logo for NERC, consisting of the letters "NERC" in a bold, black, sans-serif font. A thick blue horizontal bar is positioned directly below the letters.

# NERC

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

The title "Standard Processes Manual" is centered on the page in a blue, sans-serif font. A thick yellow horizontal bar is located above and below this text.

## Standard Processes Manual

VERSION 3

Effective: June 26, 2013

A faint, light blue map of North America is visible in the background of the lower half of the cover. The map shows the outlines of the United States, Canada, and Mexico.

to ensure  
the reliability of the  
bulk power system

# Table of Contents

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Section 1.0: Introduction.....	3
Section 2.0: Elements of a Reliability Standard .....	6
Section 3.0: Reliability Standards Program Organization .....	10
Section 4.0: Process for Developing, Modifying, Withdrawing or Retiring a Reliability Standard .....	14
Section 5.0: Process for Developing a Defined Term.....	26
Section 6.0: Processes for Conducting Field Tests and Collecting and Analyzing Data .....	28
Section 7.0: Process for Developing an Interpretation .....	30
Section 8.0: Process for Appealing an Action or Inaction.....	34
Section 9.0: Process for Developing a Variance.....	36
Section 10.0: Processes for Developing a Reliability Standard Related to a Confidential Issue	38
Section 11.0: Process for Approving Supporting Documents .....	43
Section 12.0: Process for Correcting Errata.....	44
Section 13.0: Process for Conducting Periodic Reviews of Reliability Standards.....	45
Section 14.0: Public Access to Reliability Standards Information .....	46
Section 15.0: Process for Updating Standard Processes .....	47
Section 16.0: Waiver.....	48

## Section 1.0: Introduction

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### 1.1: Authority

This manual is published by the authority of the NERC Board of Trustees. The Board of Trustees, as necessary to maintain NERC's certification as the Electric Reliability Organization ("ERO"), may file the manual with Applicable Governmental Authorities for approval as an ERO document. When approved, the manual is appended to and provides implementation detail in support of the ERO Rules of Procedure Section 300 — Reliability Standards Development.

Capitalized terms not otherwise defined herein, shall have the meaning set forth in the Definitions Used in the Rules of Procedure, Appendix 2 to the Rules of Procedure.

### 1.2: Scope

The policies and procedures in this manual shall govern the activities of the North American Electric Reliability Corporation ("NERC") related to the development, approval, revision, reaffirmation, and withdrawal of Reliability Standards, Interpretations, Violation Risk Factors ("VRFs"), Violation Severity Levels ("VSLs"), definitions, Variances, and reference documents developed to support standards for the Reliable Operation and planning of the North American Bulk Power Systems.

This manual also addresses the role of the Standards Committee, drafting team and ballot body in the development and approval of Compliance Elements in conjunction with standard development.

### 1.3: Background

NERC is a nonprofit corporation formed for the purpose of becoming the North American ERO. NERC works with all stakeholder segments of the electric industry, including electricity users, to develop Reliability Standards for the reliability planning and Reliable Operation of the North American Bulk Power Systems. In the United States, the Energy Policy Act of 2005 added Section 215 to the Federal Power Act for the purpose of establishing a framework to make Reliability Standards mandatory for all Bulk Power System owners, operators, and users. Similar authorities are provided by Applicable Governmental Authorities in Canada. NERC was certified as the ERO effective July 2006. *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030 (2007).

### 1.4: Essential Attributes of NERC's Reliability Standards Processes

NERC's Reliability Standards development processes provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing a proposed Reliability Standard consistent with the attributes necessary for American National Standards Institute ("ANSI") accreditation. The same attributes, as well as transparency, consensus-building, and timeliness, are also required under the ERO Rules of Procedure Section 304.

- ***Open Participation***

Participation in NERC's Reliability Standards development balloting and approval processes shall be open to all entities materially affected by NERC's Reliability Standards. There shall be no financial barriers to participation in NERC's Reliability Standards balloting and approval processes. Membership in the Registered Ballot Body shall not be conditional upon membership in any organization, nor unreasonably restricted on the basis of technical qualifications or other such requirements.



- ***Balance***

NERC's Reliability Standards development processes shall not be dominated by any two interest categories, individuals, or organizations and no single interest category, individual, or organization is able to defeat a matter.

NERC shall use a voting formula that allocates each industry Segment an equal weight in determining the final outcome of any Reliability Standard action. The Reliability Standards development processes shall have a balance of interests. Participants from diverse interest categories shall be encouraged to join the Registered Ballot Body and participate in the balloting process, with a goal of achieving balance between the interest categories. The Registered Ballot Body serves as the consensus body voting to approve each new or proposed Reliability Standard, definition, Variance, and Interpretation.

- ***Coordination and harmonization with other American National Standards activities***

NERC is committed to resolving any potential conflicts between its Reliability Standards development efforts and existing American National Standards and candidate American National Standards.

- ***Notification of standards development***

NERC shall publicly distribute a notice to each member of the Registered Ballot Body, and to each stakeholder who indicates a desire to receive such notices, for each action to create, revise, reaffirm, or withdraw a Reliability Standard, definition, or Variance; and for each proposed Interpretation. Notices shall be distributed electronically, with links to the relevant information, and notices shall be posted on NERC's Reliability Standards web page. All notices shall identify a readily available source for further information.

- ***Transparency***

The process shall be transparent to the public.

- ***Consideration of views and objections***

Drafting teams shall give prompt consideration to the written views and objections of all participants as set forth herein. Drafting teams shall make an effort to resolve each objection that is related to the topic under review.

- ***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.

- ***Consensus vote***

NERC shall use its voting process to determine if there is sufficient consensus to approve a proposed Reliability Standard, definition, Variance, or Interpretation. NERC shall form a ballot pool for each Reliability Standard action from interested members of its Registered Ballot Body. Approval of any Reliability Standard action requires:

- A quorum, which is established by at least 75% of the members of the ballot pool submitting a response excluding unreturned ballots; and
- A two-thirds majority of the weighted Segment votes cast shall be affirmative. The number of votes cast during all stages of balloting except the final ballot is the sum of affirmative and negative votes with comments, excluding abstentions, non-responses, and

negative votes without comments. During the final ballot, the number of votes cast is the sum of affirmative and negative votes, excluding abstentions and non-responses.

- ***Timeliness***  
Development of Reliability Standards shall be timely and responsive to new and changing priorities for reliability of the Bulk Power System.
- ***Metric Policy***  
The International System of units is the preferred units of measurement in NERC Reliability Standard. However, because NERC's Reliability Standards apply in Canada, the United States and portions of Mexico, where applicable, measures are provided in both the metric and English units.

### **1.5: Ethical Participation**

All participants in the NERC Standard development process, including drafting teams, quality reviewers, Standards Committee members and members of the Registered Ballot Body, are obligated to act in an ethical manner in the exercise of all activities conducted pursuant to the terms and conditions of the Standard Processes Manual and the standard development process.

## Section 2.0: Elements of a Reliability Standard

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### 2.1: Definition of a Reliability Standard

A Reliability Standard includes a set of Requirements that define specific obligations of owners, operators, and users of the North American Bulk Power Systems. The Requirements shall be material to reliability and measurable. A Reliability Standard is defined as follows:

“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. *See Appendix 2 to the NERC Rules of Procedure, Definitions Used in the Rules of Procedure.*

### 2.2: Reliability Principles

NERC Reliability Standards are based on certain reliability principles that define the foundation of reliability for North American Bulk Power Systems.<sup>1</sup> Each Reliability Standard shall enable or support one or more of the reliability principles, thereby ensuring that each Reliability Standard serves a purpose in support of reliability of the North American Bulk Power Systems. Each Reliability Standard shall also be consistent with all of the reliability principles, thereby ensuring that no Reliability Standard undermines reliability through an unintended consequence.

### 2.3: Market Principles

Recognizing that Bulk Power System reliability and electricity markets are inseparable and mutually interdependent, all Reliability Standards shall be consistent with the market interface principles.<sup>2</sup> Consideration of the market interface principles is intended to ensure that Reliability Standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

### 2.4: Types of Reliability Requirements

Generally, each Requirement of a Reliability Standard shall identify what Functional Entities shall do, and under what conditions, to achieve a specific reliability objective. Although Reliability Standards all follow this format, several types of Requirements may exist, each with a different approach to measurement.

- **Performance-based Requirements** define a specific reliability objective or outcome achieved by one or more entities that has a direct, observable effect on the reliability of the Bulk Power System, *i.e.* an effect that can be measured using power system data or trends. In its simplest form, a performance-based requirement has four components: *who*,

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<sup>1</sup> The intent of the set of NERC Reliability Standards is to deliver an adequate level of reliability. The latest set of reliability principles and the latest set of characteristics associated with an adequate level of reliability are posted on the Reliability Standards Resources web page.

<sup>2</sup> The latest set of market interface principles is posted on the Reliability Standards Resources web page.

*under what conditions (if any), shall perform what action, to achieve what particular result or outcome.*

- **Risk-based Requirements** define actions by one or more entities that reduce a stated risk to the reliability of the Bulk Power System and can be measured by evaluating a particular product or outcome resulting from the required actions. A risk-based reliability requirement should be framed as: *who, under what conditions (if any), shall perform what action, to achieve what particular result or outcome that reduces a stated risk to the reliability of the Bulk Power System.*
- **Capability-based Requirements** define capabilities needed by one or more entities to perform reliability functions and can be measured by demonstrating that the capability exists as required. A capability-based reliability requirement should be framed as: *who, under what conditions (if any), shall have what capability, to achieve what particular result or outcome to perform an action to achieve a result or outcome or to reduce a risk to the reliability of the Bulk Power System.*

The body of reliability Requirements collectively provides a defense-in-depth strategy supporting reliability of the Bulk Power System.

### 2.5: Elements of a Reliability Standard

A Reliability Standard includes several components designed to work collectively to identify what entities must do to meet their reliability-related obligations as an owner, operator or user of the Bulk Power System.

The components of a Reliability Standard may include the following:

**Title:** A brief, descriptive phrase identifying the topic of the Reliability Standard.

**Number:** A unique identification number assigned in accordance with a published classification system to facilitate tracking and reference to the Reliability Standards.<sup>3</sup>

**Purpose:** The reliability outcome achieved through compliance with the Requirements of the Reliability Standard.

**Applicability:** Identifies which entities are assigned reliability requirements. The specific Functional Entities and Facilities to which the Reliability Standard applies.

**Effective Dates:** Identification of the date or pre-conditions determining when each Requirement becomes effective in each jurisdiction.

**Requirement:** An explicit statement 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 for which compliance is mandatory.

**Compliance Elements:** Elements to aid in the administration of ERO compliance monitoring and enforcement responsibilities.<sup>4</sup>

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<sup>3</sup> Reliability Standards shall be numbered in accordance with the NERC Standards Numbering Convention as provide on the Reliability Standards Resources web page.

- **Measure:** Provides identification of the evidence or types of evidence that may demonstrate compliance with the associated requirement.
- **Violation Risk Factors and Violation Severity Levels:** Violation risk factors (VRFs) and violation severity levels (VSLs) are used as factors when determining the size of a penalty or sanction associated with the violation of a requirement in an approved reliability standard.<sup>5</sup> Each requirement in each reliability standard has an associated VRF and a set of VSLs. VRFs and VSLs are developed by the drafting team, working with NERC Staff, at the same time as the associated reliability standard, but are not part of the reliability standard. The Board of Trustees is responsible for approving VRFs and VSLs.
  - **Violation Risk Factors**  
VRFs identify the potential reliability significance of noncompliance with each requirement. Each requirement is assigned a VRF in accordance with the latest approved set of VRF criteria.<sup>6</sup>
  - **Violation Severity Levels**  
VSLs define the degree to which compliance with a requirement was not achieved. Each requirement shall have at least one VSL. While it is preferable to have four VSLs for each requirement, some requirements do not have multiple “degrees” of noncompliant performance and may have only one, two, or three VSLs. Each requirement is assigned one or more VSLs in accordance with the latest approved set of VSL criteria.<sup>7</sup>

**Version History:** The version history is provided for informational purposes and lists information regarding prior versions of Reliability Standards.

**Variance:** A Requirement (to be applied in the place of the continent-wide Requirement) that is applicable to a specific geographic area or to a specific set of Registered Entities.

**Compliance Enforcement Authority:** The entity that is responsible for assessing performance or outcomes to determine if an entity is compliant with the associated Reliability Standard. The Compliance Enforcement Authority will be NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.

**Application guidelines:** Guidelines to support the implementation of the associated Reliability Standard.

**Procedures:** Procedures to support implementation of the associated Reliability Standard.

The only mandatory and enforceable components of a Reliability Standard are the: (1) applicability, (2) Requirements, and the (3) effective dates. The additional components are included in the Reliability Standard for informational purposes, to establish the relevant scope and technical paradigm, and to

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<sup>4</sup> It is the responsibility of the ERO staff to develop compliance tools for each standard; these tools are not part of the standard but are referenced in this manual because the preferred approach to developing these tools is to use a transparent process that leverages the technical and practical expertise of the drafting team and ballot pool..

<sup>5</sup> The *Sanction Guidelines of the North American Electric Reliability Corporation* identifies the factors used to determine a penalty or sanction for violation of reliability standard and is posted on the NERC Web Site.

<sup>6</sup> The latest set of approved VRF Criteria is posted on the Reliability Standards Resources Web Page.

<sup>7</sup> The latest set of approved VSL Criteria is posted on the Reliability Standards Resources Web Page.

## Elements of a Reliability Standard

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provide guidance to Functional Entities concerning how compliance will be assessed by the Compliance Enforcement Authority.

## Section 3.0: Reliability Standards Program Organization

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### 3.1: Board of Trustees

The NERC Board of Trustees shall consider for adoption Reliability Standards, definitions, Variances and Interpretations and associated implementation plans that have been processed according to the processes identified in this manual. Once the Board adopts a Reliability Standard, definition, Variance or Interpretation, the Board shall direct NERC Staff to file the document(s) for approval with Applicable Governmental Authorities.

### 3.2: Registered Ballot Body

The Registered Ballot Body comprises all entities or individuals that qualify for one of the Segments approved by the Board of Trustees<sup>8</sup>, and are registered with NERC as potential ballot participants in the voting on Reliability Standards. Each member of the Registered Ballot Body is eligible to join the ballot pool for each Reliability Standard action.

### 3.3: Ballot Pool

Each Reliability Standard action has its own ballot pool formed of interested members of the Registered Ballot Body. The ballot pool comprises those members of the Registered Ballot Body that respond to a pre-ballot request to participate in that particular Reliability Standard action. The ballot pool votes on each Reliability Standards action. The ballot pool remains in place until all balloting related to that Reliability Standard action has been completed.

### 3.4: Standards Committee

The Standards Committee serves at the pleasure and direction of the NERC Board of Trustees, and the Board approves the Standards Committee's Charter.<sup>9</sup> Standards Committee members are elected by their respective Segment's stakeholders. The Standards Committee consists of two members of each of the Segments in the Registered Ballot Body.<sup>10</sup> A member of the NERC Reliability Standards Staff shall serve as the non-voting secretary to the Standards Committee.

The Standards Committee is responsible for managing the Reliability Standards processes for development of Reliability Standards, definitions, Variances and Interpretations in accordance with this manual. The responsibilities of the Standards Committee are defined in detail in the Standards Committee's Charter. The Standards Committee is responsible for ensuring that the Reliability Standards, definitions, Variances and Interpretations developed by drafting teams are developed in accordance with the processes in this manual and meet NERC's benchmarks for Reliability Standards as well as criteria for governmental approval.<sup>11</sup>

The Standards Committee has the right to remand work to a drafting team, to reject the work of a drafting team, or to accept the work of a drafting team. The Standards Committee may disband a drafting team if it determines (a) that the drafting team is not producing a standard in a timely manner; (b) the drafting

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<sup>8</sup> The industry Segment qualifications are described in the Development of the Registered Ballot Body and Segment Qualification Guidelines document posted on the Reliability Standards Resources web page and are included in Appendix 3D of the NERC Rules of Procedure.

<sup>9</sup> The Standards Committee Charter is posted on the Reliability Standards Resources web page.

<sup>10</sup> In addition to balanced Segment representation, the Standards Committee shall also have representation that is balanced among countries based on Net Energy for Load ("NEL"). As needed, the Board of Trustees may approve special procedures for the balancing of representation among countries represented within NERC.

<sup>11</sup> The Ten Benchmarks of an Excellent Reliability Standard and FERC's Criteria for Approving Reliability Standards are posted on the Reliability Standards Resources web page.

team is not able to produce a standard that will achieve industry consensus; (c) the drafting team has not addressed the scope of the SAR; or (d) the drafting team has failed to fully address a regulatory directive or otherwise provided a responsive or equally efficient and effective alternative. The Standards Committee may direct a drafting team to revise its work to follow the processes in this manual or to meet the criteria for NERC's benchmarks for Reliability Standards, or to meet the criteria for governmental approval; however, the Standards Committee shall not direct a drafting team to change the technical content of a draft Reliability Standard.

The Standards Committee shall meet at regularly scheduled intervals (either in person, or by other means). All Standards Committee meetings are open to all interested parties.

### **3.5: NERC Reliability Standards Staff**

The NERC Reliability Standards Staff, led by the Director of Standards, is responsible for administering NERC's Reliability Standards processes in accordance with this manual. The NERC Reliability Standards Staff provides support to the Standards Committee in managing the Reliability Standards processes and in supporting the work of all drafting teams. The NERC Reliability Standards Staff works to ensure the integrity of the Reliability Standards processes and consistency of quality and completeness of the Reliability Standards. The NERC Reliability Standards Staff facilitates all steps in the development of Reliability Standards, definitions, Variances, Interpretations and associated implementation plans.

The NERC Reliability Standards Staff is responsible for presenting Reliability Standards, definitions, Variances, and Interpretations to the NERC Board of Trustees for adoption. When presenting Reliability Standards-related documents to the NERC Board of Trustees for adoption or approval, the NERC Reliability Standards Staff shall report the results of the associated stakeholder ballot, including identification of unresolved stakeholder objections and an assessment of the document's practicality and enforceability.

### **3.6: Drafting Teams**

The Standards Committee shall appoint industry experts to drafting teams to work with stakeholders in developing and refining Standard Authorization Requests ("SARs"), Reliability Standards, definitions, and Variances. The NERC Reliability Standards Staff shall appoint drafting teams that develop Interpretations. The NERC Reliability Standards Staff shall provide, or solicit from the industry, essential support for each of the drafting teams in the form of technical writers, legal, compliance, and rigorous and highly trained project management and facilitation support personnel.

Each drafting team may consist of a group of technical, legal, and compliance experts that work cooperatively with the support of the NERC Reliability Standards Staff.<sup>12</sup> The technical experts provide the subject matter expertise and guide the development of the technical aspects of the Reliability Standard, assisted by technical writers, legal and compliance experts. The technical experts maintain authority over the technical details of the Reliability Standard. Each drafting team appointed to develop a Reliability Standard is responsible for following the processes identified in this manual as well as procedures developed by the Standards Committee from the inception of the assigned project through the final acceptance of that project by Applicable Governmental Authorities.

Collectively, each drafting team:

- Drafts proposed language for the Reliability Standards, definitions, Variances, and/or Interpretations and associated implementation plans.

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<sup>12</sup> The detailed responsibilities of drafting teams are outlined in the Drafting Team Guidelines, which is posted on the Reliability Standards Resources web page.



- Develops and refines technical documents that aid in the understanding of Reliability Standards.
- Works collaboratively with NERC Compliance Monitoring and Enforcement Staff to develop Reliability Standard Audit Worksheets (“RSAWs”) at the same time Reliability Standards are developed.
- Provides assistance to NERC Staff in the development of Compliance Elements of proposed Reliability Standards.
- Solicits, considers, and responds to comments related to the specific Reliability Standards development project.
- Participates in industry forums to help build consensus on the draft Reliability Standards, definitions, Variances, and/or Interpretations and associated implementation plans.
- Assists in developing the documentation used to obtain governmental approval of the Reliability Standards, definitions, Variances, and/or Interpretations and associated implementation plans.

All drafting teams report to the Standards Committee.

### **3.7: Governmental Authorities**

The Federal Energy Regulatory Commission (“FERC”) in the United States of America, and where permissible by statute or regulation, the provincial government of each of the eight Canadian Provinces (Manitoba, Nova Scotia, Saskatchewan, Alberta, Ontario, British Columbia, New Brunswick and Quebec) and the National Energy Board of Canada have the authority to approve each new, revised or withdrawn Reliability Standard, definition, Variance, VRF, VSL and Interpretation following adoption or approval by the NERC Board of Trustees.

### **3.8: Committees, Subcommittees, Working Groups, and Task Forces**

NERC’s technical committees, subcommittees, working groups, and task forces provide technical research and analysis used to justify the development of new Reliability Standards and provide guidance, when requested by the Standards Committee, in overseeing field tests or collection and analysis of data. The technical committees, subcommittees, working groups, and task forces provide feedback to drafting teams during both informal and formal comment periods.

The Standards Committee may request that a NERC technical committee or other group prepare a Technical document to support development of a proposed Reliability Standard.

The technical committees, subcommittees, working groups, and task forces share their observations regarding the need for new or modified Reliability Standards or Requirements with the NERC Reliability Standards Staff for use in identifying the need for new Reliability Standards projects for the three-year *Reliability Standards Development Plan*.

### **3.9: Compliance and Certification Committee**

The Compliance and Certification Committee is responsible for monitoring NERC’s compliance with its Reliability Standards processes and procedures and for monitoring NERC’s compliance with the Rules of Procedure regarding the development of new or revised Reliability Standards, definitions, Variances, and Interpretations. The Compliance and Certification Committee may assist in verifying that each proposed Reliability Standard is enforceable as written before the Reliability Standard is posted for formal stakeholder comment and balloting.

### **3.10: Compliance Monitoring and Enforcement Program**

As applicable, the NERC Compliance Monitoring and Enforcement Program Staff manages and enforces compliance with approved Reliability Standards. Compliance Monitoring and Enforcement Staff are responsible for the development of select compliance tools. The drafting team and the Compliance Monitoring and Enforcement Program Staff shall work together during the Reliability Standard development process to ensure an accurate and consistent understanding of the Requirements and their intent, and to ensure that applicable compliance tools accurately reflect that intent. The goal of this collaboration is to ensure that application of the Reliability Standards in the Compliance Monitoring and Enforcement Program by NERC and the Regional Entities is consistent.

The Compliance Monitoring and Enforcement Program is encouraged to share its observations regarding the need for new or modified Requirements with the NERC Reliability Standards Staff for use in identifying the need for new Reliability Standards projects.

### **3.11: North American Energy Standards Board (“NAESB”)**

While NERC has responsibility for developing Reliability Standards to support reliability, NAESB has responsibility for developing business practices and coordination between reliability and business practices as needed. NERC and NAESB developed and approved a procedure<sup>13</sup> to guide the development of Reliability Standards and business practices where the reliability and business practice components are intricately entwined within a proposed Reliability Standard.

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<sup>13</sup> The NERC NAESB Template Procedure for Joint Standards Development and Coordination is posted on the Reliability Standards Resources web page.

## Section 4.0: Process for Developing, Modifying, Withdrawing or Retiring a Reliability Standard

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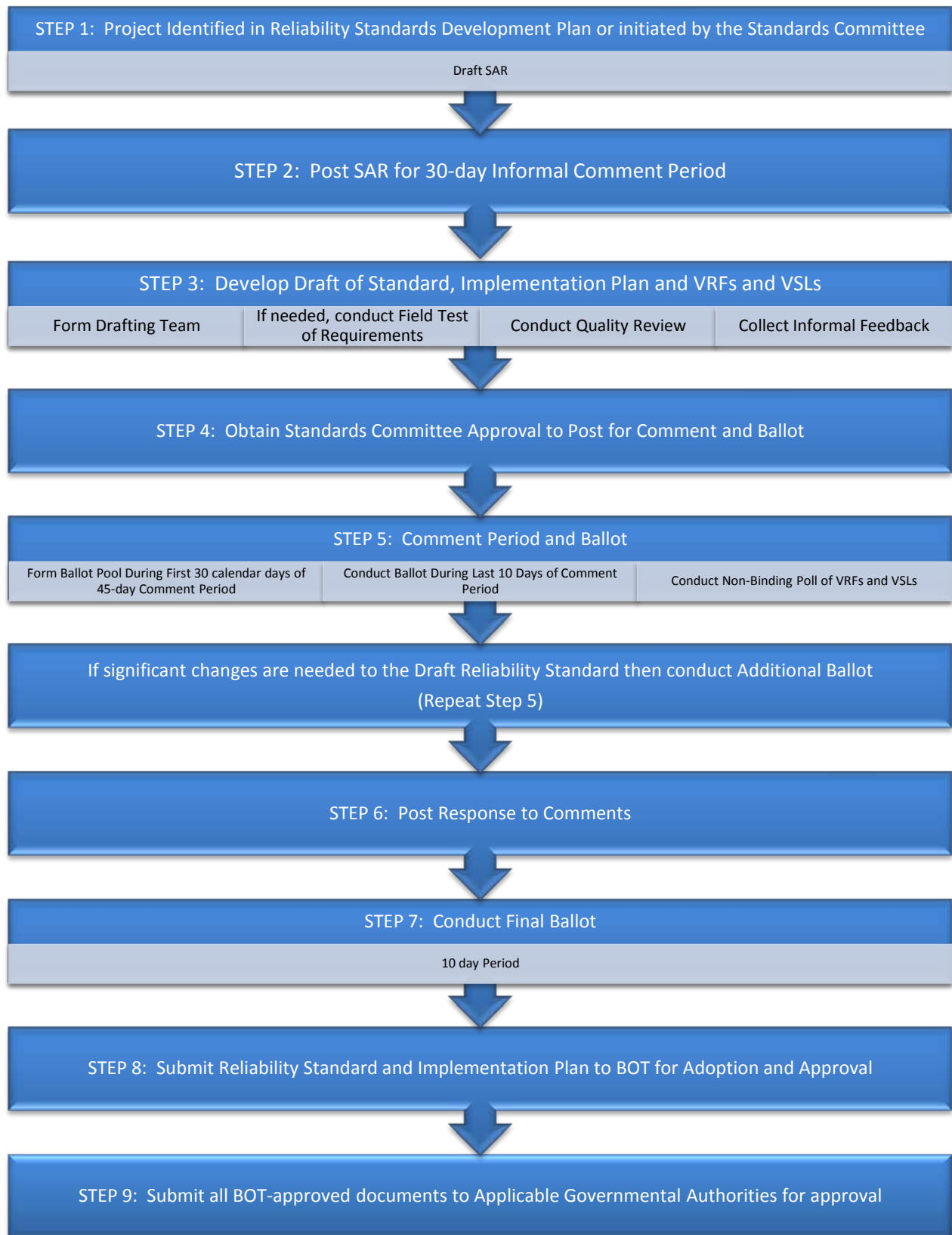
There are several steps to the development, modification, withdrawal or retirement of a Reliability Standard.<sup>14</sup>

The development of the *Reliability Standards Development Plan* is the appropriate forum for reaching agreement on whether there is a need for a Reliability Standard and the scope of a proposed Reliability Standard. A typical process for a project identified in the *Reliability Standards Development Plan* that involves a revision to an existing Reliability Standard is shown below. Note that most projects do not include a field test.

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<sup>14</sup> The process described is also applicable to projects used to propose a new or modified definition or Variance or to propose retirement of a definition or Variance.

## Process for Developing, Modifying, Withdrawing or Retiring a Reliability Standard



**FIGURE 1: Process for Developing or Modifying a Reliability Standard**

### 4.1: Posting and Collecting Information on SARs

#### Standard Authorization Request

A Standard Authorization Request (“SAR”) is the form used to document the scope and reliability benefit of a proposed project for one or more new or modified Reliability Standards or definitions or the benefit of retiring one or more approved Reliability Standards. Any entity or individual, including NERC committees or subgroups and NERC Staff, may propose the development of a new or modified Reliability Standard, or may propose the retirement of a Reliability Standard (in whole or in part), by submitting a completed SAR<sup>15</sup> to the NERC Reliability Standards Staff. The Standards Committee has the authority to approve the posting of all SARs for projects that propose (i) developing a new or modified Reliability Standard or definition or (ii) propose retirement of an existing Reliability Standard (or elements thereof).

The NERC Reliability Standards Staff sponsors an open solicitation period each year seeking ideas for new Reliability Standards projects (using *Reliability Standards Suggestions and Comments forms*). The open solicitation period is held in conjunction with the annual revision to the *Reliability Standards Development Plan*. While the Standards Committee prefers that ideas for new projects be submitted during this annual solicitation period through submittal of a *Reliability Standards Suggestions and Comments Form*,<sup>16</sup> a SAR proposing a specific project may be submitted to the NERC Reliability Standards Staff at any time.

Each SAR that proposes a “new” or substantially revised Reliability Standard or definition should be accompanied by a technical justification that includes, as a minimum, a discussion of the reliability-related benefits and costs of developing the new Reliability Standard or definition, and a technical foundation document (e.g., research paper) to guide the development of the Reliability Standard or definition. The technical document should address the engineering, planning and operational basis for the proposed Reliability Standard or definition, as well as any alternative approaches considered during SAR development.

The NERC Reliability Standards Staff shall review each SAR and work with the submitter to verify that all required information has been provided. All properly completed SARs shall be submitted to the Standards Committee for action at the next regularly scheduled Standards Committee meeting.

When presented with a SAR, the Standards Committee shall determine if the SAR is sufficiently complete to guide Reliability Standard development and whether the SAR is consistent with this manual. The Standards Committee shall take one of the following actions:

- Accept the SAR.
- Remand the SAR back to the requestor or to NERC Reliability Standards Staff for additional work.
- Reject the SAR. The Standards Committee may reject a SAR for good cause. If the Standards Committee rejects a SAR, it shall provide a written explanation for rejection to the sponsor within ten days of the rejection decision.
- Delay action on the SAR pending one of the following: (i) development of a technical justification for the proposed project; or (ii) consultation with another NERC Committee to determine if there is another approach to addressing the issue raised in the SAR.

If the Standards Committee is presented with a SAR that proposes developing a new Reliability Standard or definition but does not have a technical justification upon which the Reliability Standard or definition

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<sup>15</sup> The SAR form can be downloaded from the Reliability Standards Resources web page.

<sup>16</sup> The *Reliability Standards Suggestions and Comments Form* can be downloaded from the Reliability Standards Resources web page.

## Process for Developing, Modifying, Withdrawing or Retiring a Reliability Standard

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can be developed, the Standards Committee shall direct the NERC Reliability Standards Staff to post the SAR for a 30-day comment period solely to collect stakeholder feedback on the scope of technical foundation, if any, needed to support the proposed project. If a technical foundation is determined to be necessary, the Standards Committee shall solicit assistance from NERC's technical committees or other industry experts to provide that foundation before authorizing development of the associated Reliability Standard or definition.

During the SAR comment process, the drafting team may become aware of potential regional Variances related to the proposed Reliability Standard. To the extent possible, any regional Variances or exceptions should be made a part of the SAR so that if the SAR is authorized, such variations shall be made a part of the draft new or revised Reliability Standard.

If the Standards Committee accepts a SAR, the project shall be added to the list of approved projects. The Standards Committee shall assign a priority to the project, relative to all other projects under development, and those projects already identified in the *Reliability Standards Development Plan* that are already approved for development.

The Standards Committee shall work with the NERC Reliability Standards Staff to coordinate the posting of SARs for new projects, giving consideration to each project's priority.

### **4.2: SAR Posting**

When the Standards Committee determines it is ready to initiate a new project, the Standards Committee shall direct NERC Staff to post the project's SAR in accordance with the following:

- For SARs that are limited to addressing regulatory directives, or revisions to Reliability Standards that have had some vetting in the industry, authorize posting the SAR for a 30-day informal comment period with no requirement to provide a formal response to the comments received.
- For SARs that address the development of new projects or Reliability Standards, authorize posting the SAR for a 30-day formal comment period.

If a SAR for a new Reliability Standard is posted for a formal comment period, the Standards Committee shall appoint a drafting team to work with the NERC Staff coordinator to give prompt consideration of the written views and objections of all participants. The Standards Committee may use a public nomination process to populate the Reliability Standard drafting team, or may use another method that results in a team that collectively has the necessary technical expertise and work process skills to meet the objectives of the project. In some situations, an *ad hoc* team may already be in place with the requisite expertise, competencies, and diversity of views that are necessary to refine the SAR and develop the Reliability Standard, and additional members may not be needed. The drafting team shall address all comments submitted, which may be in the form of a summary response addressing each of the issues raised in comments received, during the public posting period. An effort to resolve all expressed objections shall be made, and each objector shall be advised of the disposition of the objection and the reasons therefore. If the drafting team concludes that there is not sufficient stakeholder support to continue to refine the SAR, the team may recommend that the Standards Committee direct curtailment of work on the SAR.

While there is no established limit on the number of times a SAR may be posted for comment, the Standards Committee retains the right to reverse its prior decision and reject a SAR if it believes continued revisions are not productive. The Standards Committee shall notify the sponsor in writing of the rejection within 10 calendar days.

## Process for Developing, Modifying, Withdrawing or Retiring a Reliability Standard

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If stakeholders indicate support for the project proposed with the SAR, the drafting team shall present its work to the Standards Committee with a request that the Standards Committee authorize development of the associated Reliability Standard.

The Standards Committee, once again considering the public comments received and their resolution, may then take one of the following actions:

- Authorize drafting the proposed Reliability Standard or revisions to a Reliability Standard.
- Reject the SAR with a written explanation to the sponsor and post that explanation.

### **4.3: Form Drafting Team**

When the Standards Committee is ready to have a drafting team begin work on developing a new or revised Reliability Standard, the Standards Committee shall appoint a drafting team, if one was not already appointed to develop the SAR. If the Standards Committee appointed a drafting team to refine the SAR, the same drafting team shall work to develop the associated Reliability Standard.

If no drafting team is in place, then the Standards Committee may use a public nomination process to populate the Reliability Standard drafting team, or may use another method that results in a team that collectively has the necessary technical expertise, diversity of views and work process skills to accomplish the objectives of the project on a timely basis. In some situations, an ad hoc team may already be in place with the requisite expertise, competencies, and diversity of views that are necessary to develop the Reliability Standard, and additional members may not be needed.

The NERC Reliability Standards Staff shall provide one or more members as needed to support the team with facilitation, project management, compliance, legal, regulatory and technical writing expertise and shall provide administrative support to the team, guiding the team through the steps in completing its project. In developing the Reliability Standard, the individuals provided by the NERC Reliability Standards Staff serve as advisors to the drafting team and do not have voting rights but share accountability along with the drafting team members assigned by the Standards Committee for timely delivery of a final draft Reliability Standard that meets the quality attributes identified in NERC's Benchmarks for Excellent Standards. The drafting team members assigned by the Standards Committee shall have final authority over the technical details of the Reliability Standard, while the technical writer shall provide assistance to the drafting team in assuring that the final draft of the Reliability Standard meets the quality attributes identified in NERC's Benchmarks for Excellent Standards.

Once it is appointed by the Standards Committee, the Reliability Standard drafting team is responsible for making recommendations to the Standards Committee regarding the remaining steps in the Reliability Standards process. Consistent with the need to provide for timely standards development, the Standards Committee may decide a project is so large that it should be subdivided and either assigned to more than one drafting team or assigned to a single drafting team with clear direction on completing the project in specified phases. The normally expected timeframes for standards development within the context of this manual are applicable to individual standards and not to projects containing multiple standards. Alternatively, a single drafting team may address the entire project with a commensurate increase in the expected duration of the development work. If a SAR is subdivided and assigned to more than one drafting team, each drafting team will have a clearly defined portion of the work such that there are no overlaps and no gaps in the work to be accomplished.

The Standards Committee may supplement the membership of a Reliability Standard drafting team or provide for additional advisors, as appropriate, to ensure the necessary competencies and diversity of views are maintained throughout the Reliability Standard development effort.

#### **4.4: Develop Preliminary Draft of Reliability Standard, Implementation Plan and VRFs and VSLs**

##### **4.4.1: Project Schedule**

When a drafting team begins its work, either in refining a SAR or in developing or revising a proposed Reliability Standard, the drafting team shall develop a project schedule which shall be approved by the Standards Committee. The drafting team shall report progress to the Standards Committee, against the initial project schedule and any revised schedule as requested by the Standards Committee. Where project milestones cannot be completed on a timely basis, modifications to the project schedule must be presented to the Standards Committee for consideration along with proposed steps to minimize unplanned project delays.

##### **4.4.2: Draft Reliability Standard**

The team shall develop a Reliability Standard that is within the scope of the associated SAR that includes all required elements as described earlier in this manual with a goal of meeting the quality attributes identified in NERC's Benchmarks for Excellent Standards and criteria for governmental approval. The team shall document its justification for the Requirements in its proposed Reliability Standard by explaining how each meets these criteria. The standard drafting team shall document its justification for selecting each reference by explaining how each Requirement fits the category chosen.

##### **4.4.3: Implementation Plan**

As a drafting team drafts its proposed revisions to a Reliability Standard, that team is also required to develop an implementation plan to identify any factors for consideration when approving the proposed effective date or dates for the associated Reliability Standard or Standards. As a minimum, the implementation plan shall include the following:

- The proposed effective date (the date entities shall be compliant) for the Requirements.
- Identification of any new or modified definitions that are proposed for approval with the associated Reliability Standard.
- Whether there are any prerequisite actions that need to be accomplished before entities are held responsible for compliance with one or more of the Requirements.
- Whether approval of the proposed Reliability Standard will necessitate any conforming changes to any already approved Reliability Standards – and identification of those Reliability Standards and Requirements.
- The Functional Entities that will be required to comply with one or more Requirements in the proposed Reliability Standard.

A single implementation plan may be used for more than one Reliability Standard. The implementation plan is posted with the associated Reliability Standard or Standards during the 45 (calendar) day formal comment period and is balloted with the associated Reliability Standard.

##### **4.4.4: Violation Risk Factors and Violation Severity Levels**

The drafting team shall work with NERC Staff in developing a set of VRFs and VSLs that meet the latest criteria established by NERC and Applicable Governmental Authorities. The drafting team shall document its justification for selecting each VRF and for setting each set of proposed VSLs by explaining how its proposed VRFs and VSLs meet these criteria. NERC Staff is responsible for ensuring that the VRFs and VSLs proposed for stakeholder review meet these criteria.



Before the drafting team has finalized its Reliability Standard, implementation plan, and VRFs and VSLs, the team should seek stakeholder feedback on its preliminary draft documents.

### **4.5: Informal Feedback<sup>17</sup>**

Drafting teams may use a variety of methods to collect informal stakeholder feedback on preliminary drafts of its documents, including the use of informal comment periods,<sup>18</sup> webinars, industry meetings, workshops, or other mechanisms. Information gathered from informal comment forms shall be publicly posted. While drafting teams are not required to provide a written response to each individual comment received, drafting teams are encouraged, where possible, to post a summary response that identifies how it used comments submitted by stakeholders. Drafting teams are encouraged, where possible, to reach out directly to individual stakeholders in order to facilitate resolution of identified stakeholder concerns. The intent is to gather stakeholder feedback on a “working document” before the document reaches the point where it is considered the “final draft.”

### **4.6: Conduct Quality Review**

The NERC Reliability Standards Staff shall coordinate a quality review of the Reliability Standard, implementation plan, and VRFs and VSLs in parallel with the development of the Reliability Standard and implementation plan, to assess whether the documents are within the scope of the associated SAR, whether the Reliability Standard is clear and enforceable as written, and whether the Reliability Standard meets the criteria specified in NERC’s Benchmarks for Excellent Standards and criteria for governmental approval of Reliability Standards. The drafting team shall consider the results of the quality review, decide upon appropriate changes, and recommend to the Standards Committee whether the documents are ready for formal posting and balloting.

The Standards Committee shall authorize posting the proposed Reliability Standard, and implementation plan for a formal comment period and ballot and the VRFs and VSLs for a non-binding poll as soon as the work flow will accommodate.

If the Standards Committee finds that any of the documents do not meet the specified criteria, the Standards Committee shall remand the documents to the drafting team for additional work.

If the Reliability Standard is outside the scope of the associated SAR, the drafting team shall be directed to either revise the Reliability Standard so that it is within the approved scope, or submit a request to expand the scope of the approved SAR. If the Reliability Standard is not clear and enforceable as written, or if the Reliability Standard does not meet the specified criteria, the Reliability Standard shall be returned to the drafting team by the Standards Committee with specific identification of any Requirement that is deemed to be unclear or unenforceable as written.

### **4.7: Conduct Formal Comment Period and Ballot**

Proposed new or modified Reliability Standards require a formal comment period where the new or modified Reliability Standard, implementation plan and associated VRFs and VSLs or the proposal to retire a Reliability Standard, implementation plan and associated VRFs and VSLs are posted.

The formal comment period shall be at least 45-days long. Formation of the ballot pool and Ballot of the Reliability Standard take place during this formal 45-day comment period. The intent of the formal

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<sup>17</sup> While this discussion focuses on collecting stakeholder feedback on proposed Reliability Standards and implementation plans, the same process is used to collect stakeholder feedback on proposed new or modified Interpretations, definitions and Variances.

<sup>18</sup> The term “informal comment period” refers to a comment period conducted outside of the ballot process and where there is no requirement for a drafting team to respond in writing to submitted comments.

comment period(s) is to solicit very specific feedback on the final draft of the Reliability Standard, implementation plan and VRFs and VSLs.

Comments in written form may be submitted on a draft Reliability Standard by any interested stakeholder, including NERC Staff, FERC Staff, and other interested governmental authorities. If stakeholders disagree with some aspect of the proposed set of products, comments provided should explain the reasons for such disagreement and, where possible, suggest specific language that would make the product acceptable to the stakeholder.

### **4.8: Form Ballot Pool**

The NERC Reliability Standards Staff shall establish a ballot pool during the first 30 calendar days of the 45-day formal comment period. The NERC Reliability Standards Staff shall post the proposed Reliability Standard, along with its implementation plan, VRFs and VSLs and shall send a notice to every entity in the Registered Ballot Body to provide notice that there is a new or revised Reliability Standard proposed for approval and to solicit participants for the associated ballot pool. All members of the Registered Ballot Body are eligible to join each ballot pool to vote on a new or revised Reliability Standard and its implementation plan and to participate in the non-binding poll of the associated VRFs and VSLs.

Any member of the Registered Ballot Body may join or withdraw from the ballot pool until the ballot window opens. No Registered Ballot Body member may join or withdraw from the ballot pool once the first ballot starts through the point in time where balloting for that Reliability Standard action has ended. The Director of Standards may authorize deviations from this rule for extraordinary circumstances such as the death, retirement, or disability of a ballot pool member that would prevent an entity that had a member in the ballot pool from eligibility to cast a vote during the ballot window. Any approved deviation shall be documented and noted to the Standards Committee.

### **4.9: Conduct Ballot and Non-binding Poll of VRFs and VSLs<sup>19</sup>**

The NERC Reliability Standards Staff shall announce the opening of the Ballot window and the non-binding poll of VRFs and VSLs. The Ballot window and non-binding poll of VRFs and VSLs shall take place during the last 10 calendar days of the 45-day formal comment period and for the Final Ballot shall be no less than 10 calendar days. If the last day of the ballot window falls on a Saturday or Sunday, the period does not end until the next business day.<sup>20</sup>

The ballot and non-binding poll shall be conducted electronically. The voting window shall be for a period of 10 calendar days but shall be extended, if needed, until a quorum is achieved. During a ballot window, NERC shall not sponsor or facilitate public discussion of the Reliability Standard action under ballot.

There is no requirement to conduct a new non-binding poll of the revised VRFs and VSLs if no changes were made to the associated standard, however if the requirements are modified and conforming changes are made to the associated VRFs and VSLs, another non-binding poll of the revised VRFs and VSLs shall be conducted.

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<sup>19</sup> While RSAWs are not part of the Reliability Standard, they are developed through collaboration of the SDT and NERC Compliance Staff. A non-binding poll, similar to what is done for VRFs and VSLs may be conducted for the RSAW developed through this process to gauge industry support for the companion RSAW to be provided for informational purposes to the NERC Board of Trustees.

<sup>20</sup> Closing dates may be extended as deemed appropriate by NERC Staff.

### 4.10: Criteria for Ballot Pool Approval

Ballot pool approval of a Reliability Standard requires:

A quorum, which is established by at least 75% of the members of the ballot pool submitting a response; and

A two-thirds majority of the weighted Segment votes cast shall be affirmative. The number of votes cast is the sum of affirmative votes and negative votes with comments. This calculation of votes for the purpose of determining consensus excludes (i) abstentions, (ii) non-responses, and (iii) negative votes without comments.

The following process<sup>21</sup> is used to determine if there are sufficient affirmative votes.

- For each Segment with ten or more voters, the following process shall be used: The number of affirmative votes cast shall be divided by the sum of affirmative and negative votes with comments cast to determine the fractional affirmative vote for that Segment. Abstentions, non-responses, and negative votes without comments shall not be counted for the purposes of determining the fractional affirmative vote for a Segment.
- For each Segment with less than ten voters, the vote weight of that Segment shall be proportionally reduced. Each voter within that Segment voting affirmative or negative with comments shall receive a weight of 10% of the Segment vote.
- The sum of the fractional affirmative votes from all Segments divided by the number of Segments voting<sup>22</sup> shall be used to determine if a two-thirds majority has been achieved. (A Segment shall be considered as “voting” if any member of the Segment in the ballot pool casts either an affirmative vote or a negative vote with comments.)
- A Reliability Standard shall be approved if the sum of fractional affirmative votes from all Segments divided by the number of voting Segments is at least two thirds.

### 4.11: Voting Positions

Each member of the ballot pool may **only** vote one of the following positions on the Ballot and Additional Ballot(s):

- Affirmative;
- Affirmative, with comment;
- Negative with comments;
- Abstain.

Given that there is no formal comment period concurrent with the Final Ballot, each member of the ballot pool may **only** vote one of the following positions on the Final Ballot:

- Affirmative;
- Negative;<sup>23</sup>
- Abstain.

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<sup>21</sup> Examples of weighted segment voting calculation are posted on the Reliability Standards Resources web page.

<sup>22</sup> When less than ten entities vote in a Segment, the total weight for that Segment shall be determined as one tenth per entity voting, up to ten.

<sup>23</sup> The Final Ballot is used to confirm consensus achieved during the Formal Comment and Ballot stage. Ballot Pool members voting negative on the Final Ballot will be deemed to have expressed the reason for their negative ballot in their own comments or the comments of others during prior Formal Comment periods.

### **4.12: Consideration of Comments**

If a stakeholder or balloter proposes a significant revision to a Reliability Standard during the formal comment period or concurrent Ballot that will improve the quality, clarity, or enforceability of that Reliability Standard, then the drafting team may choose to make such revisions and post the revised Reliability Standard for another 45 calendar day public comment period and ballot. Prior to posting the revised Reliability Standard for an additional comment period, the drafting team must communicate this decision to stakeholders. This communication is intended to inform stakeholders that the drafting team has identified that significant revisions to the Reliability Standard are necessary and should note that the drafting team is not required to respond in writing to comments from the previous ballot. The drafting team will respond to comments received in the last Additional Ballot prior to conducting a Final Ballot.

There is no formal comment period concurrent with the Final Ballot and no obligation for the drafting team to respond to any comments submitted during the Final Ballot.

### **4.13: Additional Ballots**

A drafting team must respond in writing to every stakeholder written comment submitted in response to a ballot prior to conducting a Final Ballot. These responses may be provided in summary form, but all comments and objections must be responded to by the drafting team. All comments received and all responses shall be publicly posted.

However, a drafting team is not required to respond in writing to comments to the previous ballot when it determines that significant changes are needed and an Additional Ballot will be conducted.

### **4.14: Conduct Final Ballot**

When the drafting team has reached a point where it has made a good faith effort at resolving applicable objections and is not making any substantive changes from the previous ballot, the team shall conduct a “Final Ballot.” A non-substantive revision is a revision that does not change the scope, applicability, or intent of any Requirement and includes but is not limited to things such as correcting the numbering of a Requirement, correcting the spelling of a word, adding an obviously missing word, or rephrasing a Requirement for improved clarity. Where there is a question as to whether a proposed modification is “substantive,” the Standards Committee shall make the final determination.

In the Final Ballot, members of the ballot pool shall again be presented the proposed Reliability Standard along with the reasons for negative votes from the previous ballot, the responses of the drafting team to those concerns, and any resolution of the differences.

All members of the ballot pool shall be permitted to reconsider and change their vote from the prior ballot. Members of the ballot pool who did not respond to the prior ballot shall be permitted to vote in the Final Ballot. In the Final Ballot, votes shall be counted by exception only — members on the Final Ballot may indicate a revision to their original vote; otherwise their vote shall remain the same as in their prior ballot.

### **4.15: Final Ballot Results**

There are no limits to the number of public comment periods and ballots that can be conducted to result in a Reliability Standard or interpretation that is clear and enforceable, and achieves a quorum and sufficient affirmative votes for approval. The Standards Committee has the authority to conclude this process for a particular Reliability Standards action if it becomes obvious that the drafting team cannot develop a Reliability Standard that is within the scope of the associated SAR, is sufficiently clear to be enforceable, and achieves the requisite weighted Segment approval percentage.

The NERC Reliability Standards Staff shall post the final outcome of the ballot process. If the Reliability Standard is rejected, the Standards Committee may decide whether to end all further work on the

proposed standard, return the project to informal development, or continue holding ballots to attempt to reach consensus on the proposed standard. If the Reliability Standard is approved, the Reliability Standard shall be posted and presented to the Board of Trustees by NERC management for adoption and subsequently filed with Applicable Governmental Authorities for approval.

### **4.16: Board of Trustees Adoption of Reliability Standards, Implementation Plan and VRFs and VSLs**

If a Reliability Standard and its associated implementation plan are approved by its ballot pool, the Board of Trustees shall consider adoption of that Reliability Standard and its associated implementation plan and shall direct the standard to be filed with Applicable Governmental Authorities for approval. In making its decision, the Board shall consider the results of the balloting and unresolved dissenting opinions. The Board shall adopt or reject a Reliability Standard and its implementation plan, but shall not modify a proposed Reliability Standard. If the Board chooses not to adopt a Reliability Standard, it shall provide its reasons for not doing so.

The board shall consider approval of the VRFs and VSLs associated with a reliability standard. In making its determination, the board shall consider the following:

- The Standards Committee shall present the results of the non-binding poll conducted and a summary of industry comments received on the final posting of the proposed VRFs and VSLs.
- NERC Staff shall present a set of recommended VRFs and VSLs that considers the views of the standard drafting team, stakeholder comments received on the draft VRFs and VSLs during the posting for comment process, the non-binding poll results, appropriate governmental agency rules and directives, and VRF and VSL assignments for other Reliability Standards to ensure consistency and relevance across the entire spectrum of Reliability Standards.

### **4.17: Compliance**

For a Reliability Standard to be enforceable, it shall be approved by its ballot pool, adopted by the NERC Board of Trustees, and approved by Applicable Governmental Authorities, unless otherwise approved by the NERC Board of Trustees pursuant to the NERC Rules of Procedure (*e.g.*, Section 321) and approved by Applicable Governmental Authorities. Once a Reliability Standard is approved or otherwise made mandatory by Applicable Governmental Authorities, all persons and organizations subject to jurisdiction of the ERO will be required to comply with the Reliability Standard in accordance with applicable statutes, regulations, and agreements.

### **4.18: Withdrawal of a Reliability Standard, Interpretation, or Definition**

The term “withdrawal” as used herein, refers to the discontinuation of a Reliability Standard, Interpretation, Variance or definition that has been approved by the Board of Trustees and (1) has not been filed with Applicable Governmental Authorities, or (2) has been filed with, but not yet approved by, Applicable Governmental Authorities. The Standards Committee may withdraw a Reliability Standard, Interpretation or definition for good cause upon approval by the Board of Trustees. Upon approval by the Board of Trustees, NERC Staff will petition the Applicable Governmental Authorities, as needed, to allow for withdrawal. The Board of Trustees also has an independent right of withdrawal that is unaffected by the terms and conditions of this Section.

### **4.19: Retirement of a Reliability Standard, Interpretation, or Definition**

The term “retirement” refers to the discontinuation of a Reliability Standard, Interpretation or definition that has been approved by Applicable Governmental Authorities. A Reliability Standard, Variance or Definition may be retired when it is superseded by a revised version, and in such cases the retirement of

## Process for Developing, Modifying, Withdrawing or Retiring a Reliability Standard

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the earlier version is to be noted in the implementation plan presented to the ballot pool for approval and the retirement shall be considered approved by the ballot pool upon ballot pool approval of the revised version.

Upon identification of a need to retire a Reliability Standard, Variance, Interpretation or definition, where the item will not be superseded by a new or revised version, a SAR containing the proposal to retire a Reliability Standard, Variance, Interpretation or definition will be posted for a comment period and ballot in the same manner as a Reliability Standard. The proposal shall include the rationale for the retirement and a statement regarding the impact of retirement on the reliability of the Bulk Power System. Upon approval by the Board of Trustees, NERC Staff will petition the Applicable Governmental Authorities to allow for retirement.

## Section 5.0: Process for Developing a Defined Term

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NERC maintains a glossary of approved terms, entitled the *Glossary of Terms Used in NERC Reliability Standards*<sup>24</sup> (“Glossary of Terms”). The Glossary of Terms includes terms that have been through the formal approval process and are used in one or more NERC Reliability Standards. Definitions shall not contain statements of performance Requirements. The Glossary of Terms is intended to provide consistency throughout the Reliability Standards.

There are several methods that can be used to add, modify or retire a defined term used in a continent-wide Reliability Standard.

- Anyone can use a Standard Authorization Request (“SAR”) to submit a request to add, modify, or retire a defined term.
- Anyone can submit a Standards Comments and Suggestions Form recommending the addition, modification, or retirement of a defined term. (The suggestion would be added to a project and incorporated into a SAR.)
- A drafting team may propose to add, modify, or retire a defined term in conjunction with the work it is already performing.

### 5.1: Proposals to Develop a New or Revised Definition

The following considerations should be made when considering proposals for new or revised definitions:

- Some NERC Regional Entities have defined terms that have been approved for use in Regional Reliability Standards, and where the drafting team agrees with a term already defined by a Regional Entity, the same definition should be adopted if needed to support a NERC Reliability Standard.
- If a term is used in a Reliability Standard according to its common meaning (as found in a collegiate dictionary), the term shall not be proposed for addition to the Glossary of Terms.
- If a term has already been defined, any proposal to modify or delete that term shall consider all uses of the definition in approved Reliability Standards, with a goal of determining whether the proposed modification is acceptable, and whether the proposed modification would change the scope or intent of any approved Reliability Standards.
- When practical, where NAESB has a definition for a term, the drafting team shall use the same definition to support a NERC Reliability Standard.

Any definition that is balloted separately from a proposed new or modified Reliability Standard or from a proposal for retirement of a Reliability Standard shall be accompanied by an implementation plan.

If a SAR is submitted to the NERC Reliability Standards Staff with a proposal for a new or revised definition, the Standards Committee shall consider the urgency of developing the new or revised definition and may direct NERC Staff to post the SAR immediately, or may defer posting the SAR until a later time based on its priority relative to other projects already underway or already approved for future development. If the SAR identifies a term that is used in a Reliability Standard already under revision by a drafting team, the Standards Committee may direct the drafting team to add the term to the scope of the existing project. Each time the Standards Committee accepts a SAR for a project that was not identified in the *Reliability Standards Development Plan*, the project shall be added to the list of approved projects.

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<sup>24</sup> The latest approved version of the Glossary of Terms is posted on the NERC website on the Standards web page.

### **5.2: Stakeholder Comments and Approvals**

Any proposal for a new or revised definition shall be processed in the same manner as a Reliability Standard and quality review shall be conducted in parallel with this process. Once authorized by the Standards Committee, the proposed definition and its implementation plan shall be posted for at least one formal stakeholder comment period and shall be balloted in the same manner as a Reliability Standard. If a new or revised definition is proposed by a drafting team, that definition may be balloted separately from the associated Reliability Standard.

Each definition that is approved by its ballot pool shall be submitted to the NERC Board of Trustees for adoption and then filed with Applicable Governmental Authorities for approval in the same manner as a Reliability Standard.



## Section 6.0: Processes for Conducting Field Tests and Collecting and Analyzing Data

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While most drafting teams can develop their Reliability Standards without the need to conduct any field tests and without the need to collect and analyze data, some Reliability Standard development efforts may require field tests to analyze data and validate concepts in the development of Reliability Standards.

There are two types of field tests – tests of concepts and tests of requirements.

### **6.1: Field Tests and Data Analysis for Validation of Concepts**

Field tests or collection and analysis of data to validate concepts that support the development of Requirements should be conducted before the SAR for a project is finalized. If an entity wants to test a technical concept in support of a proposal for a new or revised Reliability Standard, the entity should either work with one of NERC's technical committees in collecting and analyzing the data or in conducting the field test, or the entity should submit a SAR with a request to collect and analyze data or conduct a field test to validate the concept prior to developing a new or revised Reliability Standard. The request to collect and analyze data or conduct a field test should include, at a minimum, either the data collection and analysis or field test plan, the implementation schedule, and an expectation for periodic updates of the analysis of the results. If the SAR sponsor has not collected and analyzed the data or conducted the field test, the Standards Committee may solicit support from NERC's technical committees or others in the industry. The results of the data collection and analysis or field test shall then be used to determine whether to add the SAR to the list of projects in the Reliability Standard Development Plan.

If a drafting team finds that it needs to collect and analyze data or conduct a field test of a concept that was not identified when the SAR was accepted, then the Standards Committee may direct the team to withdraw the SAR until the data has been collected and analyzed or until the field test has been conducted and the industry has had an opportunity to review the results for the impact on the scope of the proposed project.

### **6.2: Field Tests and Data Analysis for Validation of Requirements**

If a drafting team wants to conduct a field test or collect and analyze data to validate its proposed Requirements in a Reliability Standard, the team shall first obtain approval from the Standards Committee.<sup>25</sup> Drafting teams are not required to collect and analyze data or to conduct a field test to validate a Reliability Standard.

The request should include at a minimum the data collection and analysis or field test plan, the implementation schedule, and an expectation for periodic updates of the results. When authorizing a drafting team to collect and analyze data or to conduct a field test of one or more Requirements, the Standards Committee may request inputs on technical matters related from NERC's technical committees or industry experts, and may request the assistance of the Compliance Monitoring and Enforcement Program. All data collection and analysis and all field tests shall be concluded and the results incorporated into the Reliability Standard Requirements as necessary before proceeding to the formal comment period and subsequent balloting.

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<sup>25</sup> The Process for Approving Data Collection and Analysis and Field Tests Associated with a Reliability Standard is posted on the Reliability Standards Resources web page.

**6.3: Communication and Coordination for All Types of Field Tests and Data Analyses**

If the conduct of a field test (concepts or Requirements) or data collection and analysis could render Registered Entities incapable of complying with the current Requirements of an approved Reliability Standard that is undergoing revision, the drafting team shall request a temporary waiver from compliance to those Requirements for entities participating in the field test. Upon request, the Standards Committee shall seek approval for the waiver from the Compliance Monitoring and Enforcement Program prior to the approval of the field test or data collection and analysis.

Once a plan for a field test or a plan for data collection and analysis is approved, the NERC Reliability Standards Staff shall, under the direction of the Standards Committee, coordinate the implementation of the field test or data collection and analysis and shall provide official notice to the participants in the field test or data collection of any applicable temporary waiver to compliance with specific noted Requirements. The drafting team conducting the field test shall provide periodic updates on the progress of the field tests or data collection and analysis to the Standards Committee. The Standards Committee has the right to curtail a field test or data collection and analysis that is not implemented in accordance with the approved plan.

The field test plan or data collection and analysis plan, its approval, its participants, and all reports and results shall be publicly posted for stakeholder review on the Reliability Standards web page.

If a drafting team conducts or participates in a field test or in data collection and analysis (of concepts or Requirements), it shall provide a final report that identifies the results and how those results will be used.

## Section 7.0: Process for Developing an Interpretation

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A valid Interpretation request is one that requests additional clarity about one or more Requirements in approved NERC Reliability Standards, but does not request approval as to how to comply with one or more Requirements. A valid Interpretation response provides additional clarity about one or more Requirements, but does not expand on any Requirement and does not explain how to comply with any Requirement. Any entity that is directly and materially affected by the reliability of the North American Bulk Power Systems may request an Interpretation of any Requirement in any continent-wide Reliability Standard that has been adopted by the NERC Board of Trustees. Interpretations will only be provided for Board of Trustees-approved Reliability Standards *i.e.* (i) the current effective version of a Reliability Standard; or (ii) a version of a Reliability Standard with a future effective date.

An Interpretation may only clarify or interpret the Requirements of an approved Reliability Standard, including, if applicable, any attachment referenced in the Requirement being clarified. No other elements of an approved Reliability Standard are subject to Interpretation.

The entity requesting the Interpretation shall submit a *Request for Interpretation* form<sup>26</sup> to the NERC Reliability Standards Staff explaining the clarification required, the specific circumstances surrounding the request, and the impact of not having the Interpretation provided. The NERC Reliability Standards and Legal Staffs shall review the request for interpretation to determine whether it meets the requirements for a valid interpretation. Based on this review, the NERC Standards and Legal Staffs shall make a recommendation to the Standards Committee whether to accept the request for Interpretation and move forward in responding to the Interpretation request.

For example, an Interpretation request may be rejected where it:

- (1) Requests approval of a particular compliance approach;
- (2) Identifies a gap or perceived weakness in the approved Reliability Standard;
- (3) Where an issue can be addressed by an active standard drafting team;
- (4) Where it requests clarification of any element of a Reliability Standard other than a Requirement;
- (5) Where a question has already been addressed in the record;
- (6) Where the Interpretation identifies an issue and proposes the development of a new or modified Reliability Standard, (such issues should be addressed via submission of a SAR);
- (7) Where an Interpretation seeks to expand the scope of a Reliability Standard; or
- (8) Where the meaning of a Reliability Standard is plain on its face.

If the Standards Committee rejects the Interpretation request, it shall provide a written explanation for rejecting the Interpretation to the entity requesting the Interpretation within 10 business days of the decision to reject. If the Standards Committee accepts the Interpretation request, the NERC Standards Staff shall (i) form a ballot pool and (ii) assemble an Interpretation drafting team with the relevant expertise to address the interpretation for approval by the Standards Committee. As soon as practical, the team shall develop a “final draft” Interpretation providing the requested clarity.

Interpretations will be balloted in the same manner as Reliability Standards.

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<sup>26</sup> The *Request for Interpretation* form is posted on the NERC Standards web page.

## Process for Developing an Interpretation

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If stakeholder comments indicate that there is not a consensus for the Interpretation, and the Interpretation drafting team cannot revise the Interpretation without violating the basic expectations outlined above, the Interpretation drafting team shall notify the Standards Committee of its conclusion and may submit a SAR with the proposed modification to the Reliability Standard. The entity that requested the Interpretation shall be notified and the disposition of the Interpretation shall be posted.

If, during its deliberations, the Interpretation drafting team identifies a reliability gap in the Reliability Standard that is highlighted by the Interpretation request, the Interpretation drafting team shall notify the Standards Committee of its conclusion and may submit a SAR with the proposed modification to the Reliability Standard at the same time it provides its proposed Interpretation.

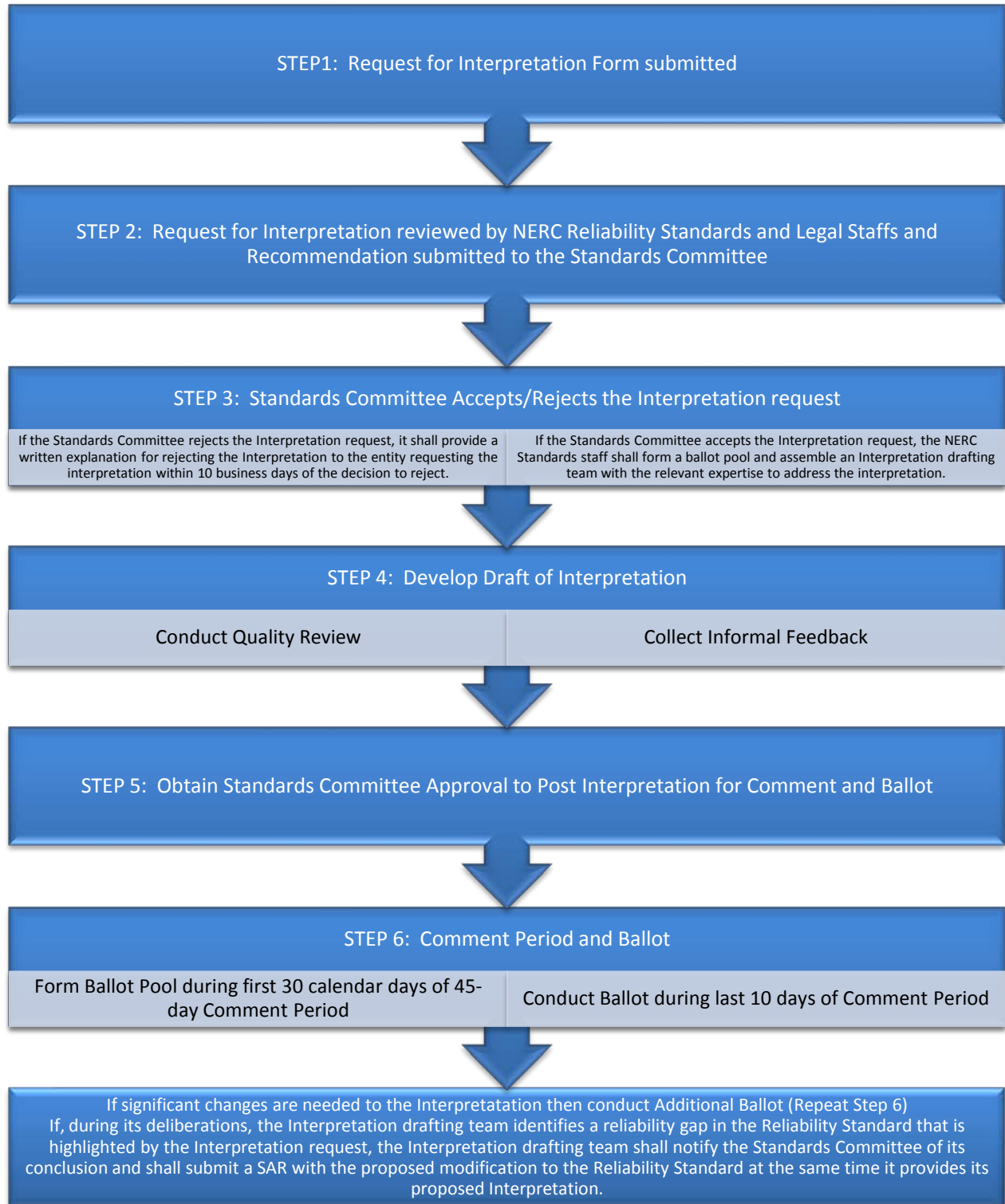
The NERC Reliability Standards and Legal Staffs shall review the final Interpretation to determine whether it has met the requirements for a valid Interpretation. Based on this review, the NERC Standards and Legal Staffs shall make a recommendation to the NERC Board of Trustees regarding adoption.

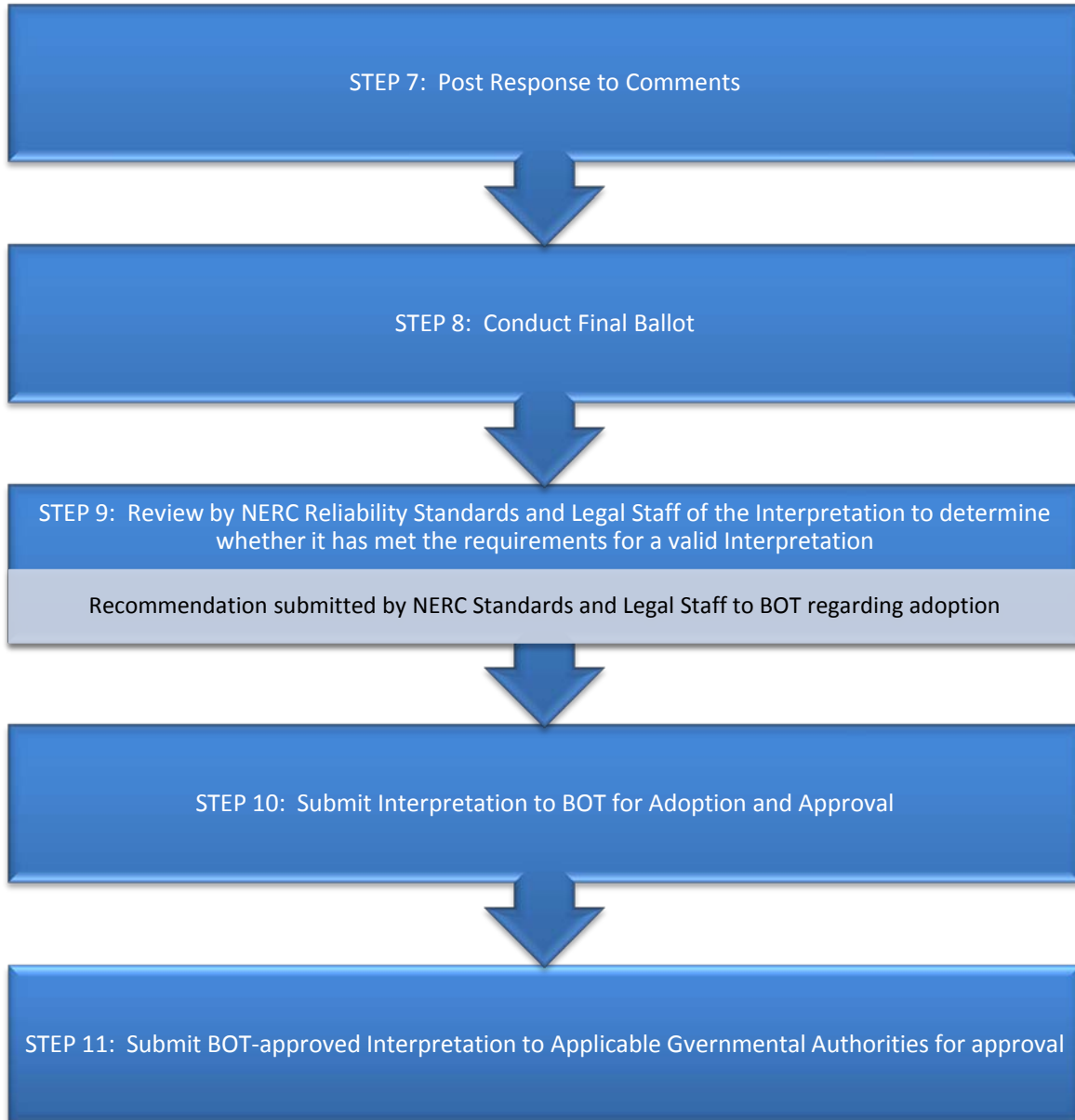
If approved by its ballot pool, the Interpretation shall be forwarded to the NERC Board of Trustees for adoption.<sup>27</sup> If an Interpretation drafting team proposes a modification to a Reliability Standard as part of its work in developing an Interpretation, the Board of Trustees shall be notified of this proposal at the time the Interpretation is submitted for adoption. Following adoption by the Board of Trustees, NERC Staff shall file the Interpretation for approval by Applicable Governmental Authorities and the Interpretation shall become effective when approved by those Applicable Governmental Authorities. The Interpretation shall stand until such time as the Interpretation can be incorporated into a future revision of the Reliability Standard or the Interpretation is retired due to a future modification of the applicable Requirement.

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<sup>27</sup> NERC will maintain a record of all interpretations associated with each standard on the Reliability Standards page of the NERC website.

## Process for Developing an Interpretation





**FIGURE 2: Process for Developing an Interpretation**

## Section 8.0: Process for Appealing an Action or Inaction

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Any entity that has directly and materially affected interests and that has been or will be adversely affected by any procedural action or inaction related to the development, approval, revision, reaffirmation, retirement or withdrawal of a Reliability Standard, definition, Variance, associated implementation plan, or Interpretation shall have the right to appeal. This appeals process applies only to the NERC Reliability Standards processes as defined in this manual, not to the technical content of the Reliability Standards action.

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made in writing within 30 days of the date of the action purported to cause the adverse effect, except appeals for inaction, which may be made at any time. The final decisions of any appeal shall be documented in writing and made public.

The appeals process provides two levels, with the goal of expeditiously resolving the issue to the satisfaction of the participants.

### **8.1: Level 1 Appeal**

Level 1 is the required first step in the appeals process. The appellant shall submit (to the Director of Standards) a complaint in writing that describes the procedural action or inaction associated with the Reliability Standards process. The appellant shall describe in the complaint the actual or potential adverse impact to the appellant. Assisted by NERC Staff and industry resources as needed, the Director of Standards shall prepare a written response addressed to the appellant as soon as practical but not more than 45 days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response shall be made a part of the public record associated with the Reliability Standard.

### **8.2: Level 2 Appeal**

If after the Level 1 Appeal the appellant remains unsatisfied with the resolution, as indicated by the appellant in writing to the Director of Standards, the Director of Standards shall convene a Level 2 Appeals Panel. This panel shall consist of five members appointed by the Board of Trustees. In all cases, Level 2 Appeals Panel members shall have no direct affiliation with the participants in the appeal.

The NERC Reliability Standards Staff shall post the complaint and other relevant materials and provide at least 30 days notice of the meeting of the Level 2 Appeals Panel. In addition to the appellant, any entity that is directly and materially affected by the procedural action or inaction referenced in the complaint shall be heard by the panel. The panel shall not consider any expansion of the scope of the appeal that was not presented in the Level 1 Appeal. The panel may, in its decision, find for the appellant and remand the issue to the Standards Committee with a statement of the issues and facts in regard to which fair and equitable action was not taken. The panel may find against the appellant with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections. The panel may not, however, revise, approve, disapprove, or adopt a Reliability Standard, definition, Variance or Interpretation or implementation plan as these responsibilities remain with the ballot pool and Board of Trustees respectively. The actions of the Level 2 Appeals Panel shall be publicly posted.

In addition to the foregoing, a procedural objection that has not been resolved may be submitted to the Board of Trustees for consideration at the time the Board decides whether to adopt a particular Reliability Standard, definition, Variance or Interpretation. The objection shall be in writing, signed by an officer of

## Process for Appealing an Action or Inaction

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the objecting entity, and contain a concise statement of the relief requested and a clear demonstration of the facts that justify that relief. The objection shall be filed no later than 30 days after the announcement of the vote by the ballot pool on the Reliability Standard in question.



## Section 9.0: Process for Developing a Variance

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A Variance is an approved, alternative method of achieving the reliability intent of one or more Requirements in a Reliability Standard. No Regional Entity or Bulk Power System owner, operator, or user shall claim a Variance from a NERC Reliability Standard without approval of such a Variance through the relevant Reliability Standard approval procedure for the Variance. Each Variance from a NERC Reliability Standard that is approved by NERC and Applicable Governmental Authorities shall be made an enforceable part of the associated NERC Reliability Standard.

NERC's drafting teams shall aim to develop Reliability Standards with Requirements that apply on a continent-wide basis, minimizing the need for Variances while still achieving the Reliability Standard's reliability objectives. If one or more Requirements cannot be met or complied with as written because of a physical difference in the Bulk Power System or because of an operational difference (such as a conflict with a federally or provincially approved tariff), but the Requirement's reliability objective can be achieved in a different fashion, an entity or a group of entities may pursue a Variance from one or more Requirements in a continent-wide Reliability Standard. It is the responsibility of the entity that needs a Variance to identify that need and initiate the processing of that Variance through the submittal of a SAR<sup>28</sup> that includes a clear definition of the basis for the Variance.

There are two types of Variances – those that apply on an Interconnection-wide basis, and those that apply to one or more entities on less than an Interconnection-wide basis.

### **9.1: Interconnection-wide Variances**

Any Variance from a NERC Reliability Standard Requirement that is proposed to apply to Registered Entities within a Regional Entity organized on an Interconnection-wide basis shall be considered an Interconnection-wide Variance and shall be developed through that Regional Entity's NERC-approved Regional Reliability Standards development procedure.

While an Interconnection-wide Variance may be developed through the associated Regional Reliability Standards development process, Regional Entities are encouraged to work collaboratively with existing continent-wide drafting teams to reduce potential conflicts between the two efforts.

An Interconnection-wide Variance from a NERC 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 other applicable standards of governmental authorities shall be made part of the associated NERC Reliability Standard. NERC shall rebuttably presume that an Interconnection-wide Variance from a NERC Reliability Standard that is developed, in accordance with a Regional Reliability Standards development procedure 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.

### **9.2: Variances that Apply on Less than an Interconnection-wide Basis**

Any Variance from a NERC Reliability Standard Requirement that is proposed to apply to one or more entities but less than an entire Interconnection (*e.g.*, a Variance that would apply to a regional transmission organization or particular market or to a subset of Bulk Power System owners, operators, or users), shall be considered a Variance. A Variance may be requested while a Reliability Standard is under development or a Variance may be requested at any time after a Reliability Standard is approved. Each request for a Variance shall be initiated through a SAR, and processed and approved in the same

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<sup>28</sup> A sample of a SAR that identifies the need for a Variance and a sample Variance are posted as resources on the Reliability Standards Resources web page.

## Process for Developing a Variance

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manner as a continent-wide Reliability Standard, using the Reliability Standards development process defined in this manual.

## Section 10.0: Processes for Developing a Reliability Standard Related to a Confidential Issue

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While it is NERC’s intent to use its ANSI-accredited Reliability Standards development process for developing its Reliability Standards, NERC has an obligation as the ERO to ensure that there are Reliability Standards in place to preserve the reliability of the interconnected Bulk Power Systems throughout North America. When faced with a national security emergency situation, NERC may use one of the following special processes to develop a Reliability Standard that addresses an issue that is confidential. Reliability Standards developed using one of the following processes shall be called, “special Reliability Standards” and shall not be filed with ANSI for approval as American National Standards.

The NERC Board of Trustees may direct the development of a new or revised Reliability Standard to address a national security situation that involves confidential issues. These situations may involve imminent or long-term threats. In general, these Board directives will be driven by information from the President of the United States of America or the Prime Minister of Canada or a national security agency or national intelligence agency of either or both governments indicating (to the ERO) that there is a national security threat to the reliability of the Bulk Power System.<sup>29</sup>

There are two special processes for developing Reliability Standards responsive to confidential issues – one process where the confidential issue is “imminent,” and one process where the confidential issue is “not imminent.”

### **10.1: Process for Developing Reliability Standards Responsive to Imminent, Confidential Issues**

If the NERC Board of Trustees directs the immediate development of a new or revised Reliability Standard to address a confidential national security emergency situation, the NERC Reliability Standards Staff shall develop a SAR, form a ballot pool (to vote on the Reliability Standard and its implementation plan) and assemble a slate of pre-defined subject matter experts as a proposed drafting team for approval by the Standards Committee’s officers. All members of the Registered Ballot Body shall have the opportunity to join the ballot pool.

### **10.2: Drafting Team Selection**

The Reliability Standard drafting team selection process shall be limited to just those candidates who have already been identified as having the appropriate security clearance, the requisite technical expertise, and either have signed or are willing to sign a strict confidentiality agreement.

### **10.3: Work of Drafting Team**

The Reliability Standard drafting team shall perform all its work under strict security and confidential rules. The Reliability Standard drafting team shall develop the new or revised Reliability Standard and its implementation plan.

The Reliability Standard drafting team shall review its work, to the extent practical, as it is being developed with officials from the appropriate governmental agencies in the U.S. and Canada, under strict security and confidentiality rules.

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<sup>29</sup> The NERC Board may direct the immediate development and issuance of a Level 3 (Essential Action) alert and then may also direct the immediate development of a new or revised Reliability Standard.

**10.4: Formal Stakeholder Comment & Ballot Window**

The draft Reliability Standard and its implementation plan shall be distributed for a formal comment period, under strict confidentiality rules, only to those entities that are listed in the NERC Compliance Registry to perform one of the functions identified in the applicability section of the Reliability Standard and have identified individuals from their organizations that have signed confidentiality agreements with NERC.<sup>30</sup> At the same time, the Reliability Standard shall be distributed to the members of the ballot pool for review and ballot. The NERC Reliability Standards Staff shall not post or provide the ballot pool with any confidential background information.

The drafting team, working with the NERC Reliability Standards Staff, shall consider and respond to all comments, make any necessary conforming changes to the Reliability Standard and its implementation plan, and shall distribute the comments, responses and any revision to the same population as received the initial set of documents for formal comment and ballot.

**10.5: Board of Trustee Actions**

Each Reliability Standard and implementation plan developed through this process shall be submitted to the NERC Board of Trustees for adoption.

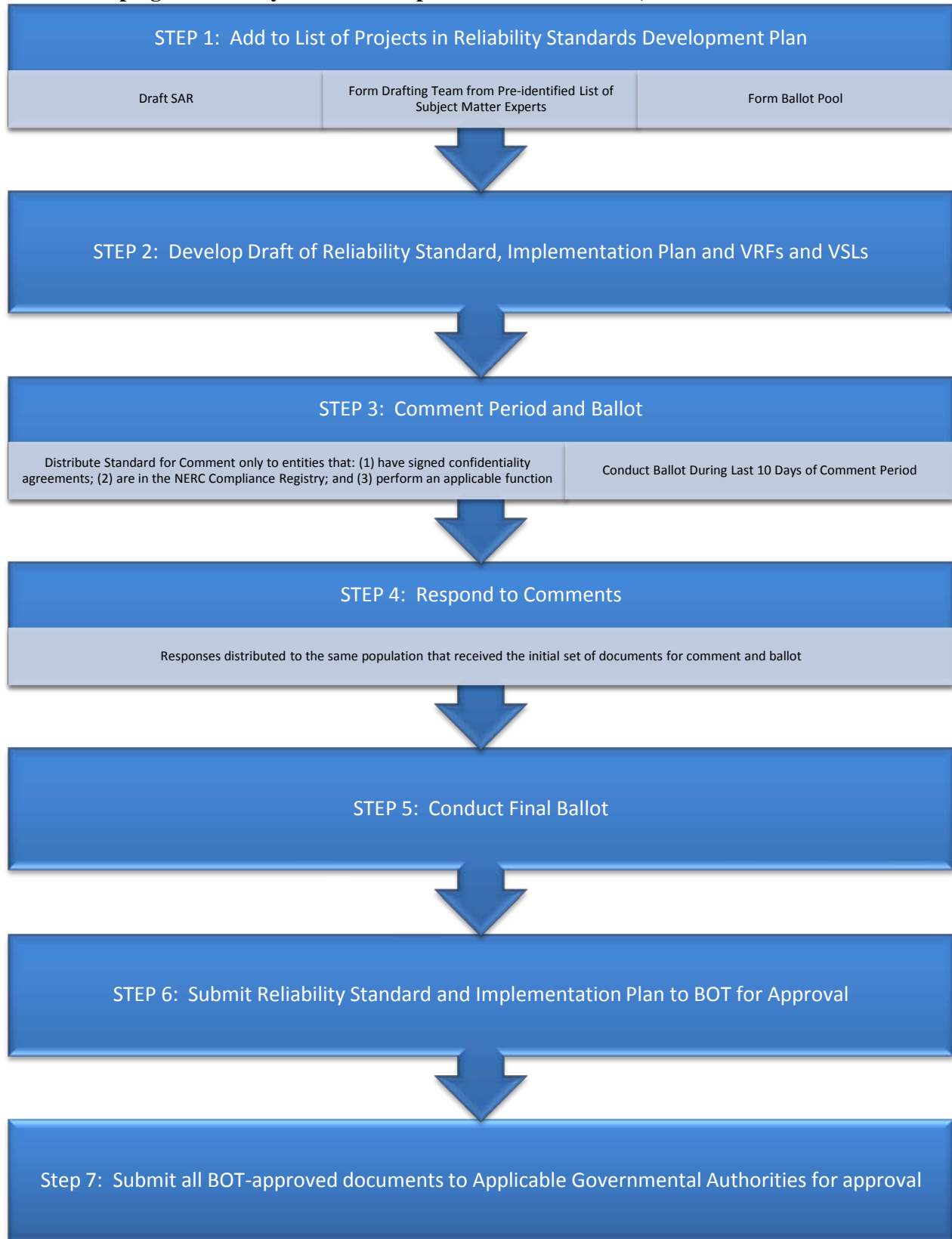
**10.6: Governmental Approvals**

All approved documents shall be filed for approval with Applicable Governmental Authorities.

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<sup>30</sup> In this phase of the process, only the proposed Reliability Standard shall be distributed to those entities expected to comply, not the rationale and justification for the Reliability Standard. Only the special drafting team members, who have the appropriate security credentials, shall have access to this rationale and justification.

**10.7: Developing a Reliability Standard Responsive to an Imminent, Confidential Issue**



**FIGURE 3: Process for Developing a Standard Responsive to an Imminent, Confidential Issue**

### **10.8: Process for Developing Reliability Standards Responsive to Non-imminent, Confidential Issues**

If the NERC Board of Trustees directs the immediate development of a new or revised Reliability Standard to address a confidential national security emergency situation, the NERC Reliability Standards Staff shall develop a SAR, form a ballot pool (to vote on the Reliability Standard and its implementation plan) and assemble a slate of pre-defined subject matter experts as a proposed drafting team for approval by the Standards Committee's officers. All members of the Registered Ballot Body shall have the opportunity to join the ballot pool.

### **10.9: Drafting Team Selection**

The drafting team selection process shall be limited to just those candidates who have already been identified as having the appropriate security clearance, the requisite technical expertise, and either have signed or are willing to sign a strict confidentiality agreement.

### **10.10: Work of Drafting Team**

The drafting team shall perform all its work under strict security and confidential rules. The Reliability Standard drafting team shall develop the new or revised Reliability Standard and its implementation plan.

The drafting team shall review its work, to the extent practical, as it is being developed with officials from the Applicable Governmental Authorities, under strict security and confidentiality rules.

### **10.11: Formal Stakeholder Comment & Ballot Window**

The draft Reliability Standard and its implementation plan shall be distributed for a formal comment period, under strict confidentiality rules, only to those entities that are listed in the NERC Compliance Registry to perform one of the functions identified in the applicability section of the Reliability Standard and have identified individuals from their organizations that have signed confidentiality agreements with NERC.<sup>31</sup> At the same time, the Reliability Standard shall be distributed to the members of the ballot pool for review and ballot. The NERC Reliability Standards Staff shall not post or provide the ballot pool with any confidential background information.

### **10.12: Revisions to Reliability Standard, Implementation Plan and VRFs and VSLs**

The drafting team, working with the NERC Reliability Standards Staff, shall work to refine the Reliability Standard, implementation plan and VRFs and VSLs in the same manner as for a new Reliability Standard following the "normal" Reliability Standards development process described earlier in this manual with the exception that distribution of the comments, responses, and new drafts shall be limited to those entities that are in the ballot pool and those entities that are listed in the NERC Compliance Registry to perform one of the functions identified in the applicability section of the Reliability Standard and have identified individuals from their organizations that have signed confidentiality agreements with NERC.

### **10.13: Board of Trustee Action**

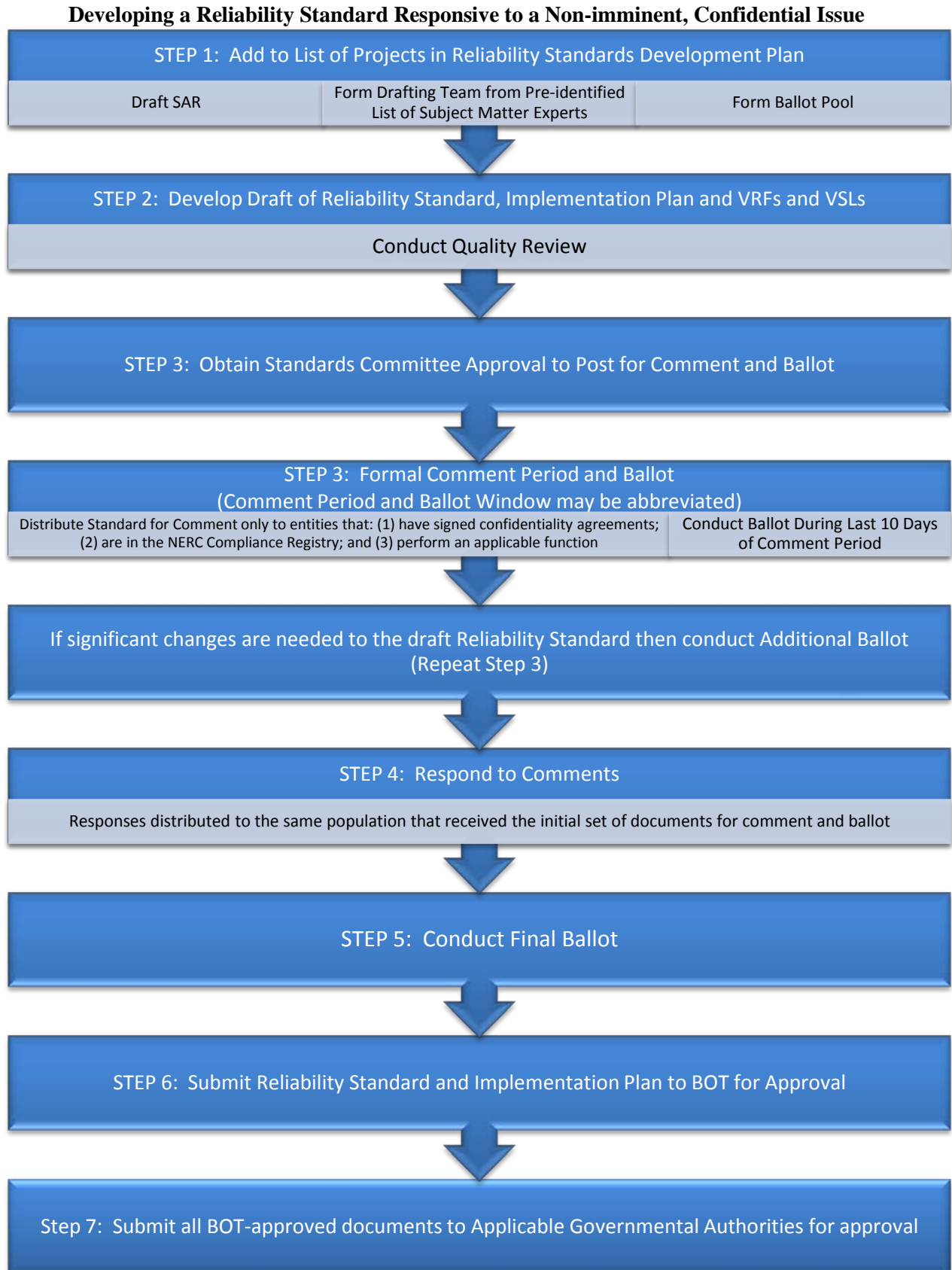
Each Reliability Standard, implementation plan, and the associated VRFs and VSLs developed through this process shall be submitted to the NERC Board of Trustees for adoption.

### **10.14: Governmental Approvals**

All BOT-approved documents shall be filed for approval with Applicable Governmental Authorities.

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<sup>31</sup> In this phase of the process, only the proposed Reliability Standard shall be distributed to those entities expected to comply, not the rationale and justification for the Reliability Standard. Only the special drafting team members, who have the appropriate security credentials, shall have access to this rationale and justification.



**FIGURE 4: Developing a Standard Responsive to a Non-Imminent, Confidential Issue**

## Section 11.0: Process for Approving Supporting Documents

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The following types of documents are samples of the types of supporting documents that may be developed to enhance stakeholder understanding and implementation of a Reliability Standard. These documents may explain or facilitate implementation of Reliability Standards but do not themselves contain mandatory Requirements subject to compliance review. Any Requirements that are mandatory shall be incorporated into the Reliability Standard in the Reliability Standard development process.

While most supporting documents are developed by the standard drafting team working to develop the associated Reliability Standard, any entity may develop a supporting document associated with a Reliability Standard.

The Standards Committee shall authorize the posting of all supporting references<sup>32</sup> that are linked to an approved Reliability Standard. Prior to granting approval to post a supporting reference with a link to the associated Reliability Standard, the Standards Committee shall verify that the document has had stakeholder review to verify the accuracy of the technical content. While the Standards Committee has the authority to approve the posting of each such reference, stakeholders, not the Standards Committee, verify the accuracy of the document's contents.

Type of Document	Description
Reference	Descriptive, technical information or analysis or explanatory information to support the understanding and interpretation of a Reliability Standard. A standard reference may support the implementation of a Reliability Standard or satisfy another purpose consistent with the reliability and market interface principles.
Guideline	Recommended process that identifies a method of meeting a Requirement under specific conditions.
Supplement	Data forms, pro forma documents, and associated instructions that support the implementation of a Reliability Standard.
Training Material	Documents that support the implementation of a Reliability Standard.
Procedure	Step-wise instructions defining a particular process or operation. Procedures may support the implementation of a Reliability Standard or satisfy another purpose consistent with the reliability and market interface principles.
White Paper	An informal paper stating a position or concept. A white paper may be used to propose preliminary concepts for a Reliability Standard or one of the documents above.

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<sup>32</sup> The Standards Committee's Procedure for Approving the Posting of Reference Documents is posted on the Reliability Standards Resources web page.



## Section 12.0: Process for Correcting Errata

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From time to time, an error may be discovered in a Reliability Standard. Such errors may be corrected (i) following a Final Ballot prior to Board of Trustees adoption, (ii) following Board of Trustees adoption prior to filing with Applicable Governmental Authorities; and (iii) following filing with Applicable Governmental Authorities. If the Standards Committee agrees that the correction of the error does not change the scope or intent of the associated Reliability Standard, and agrees that the correction has no material impact on the end users of the Reliability Standard, then the correction shall be filed for approval with Applicable Governmental Authorities as appropriate. The NERC Board of Trustees has resolved to concurrently approve any errata approved by the Standards Committee.

## Section 13.0: Process for Conducting Periodic Reviews of Reliability Standards

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All Reliability Standards shall be reviewed at least once every ten years from the effective date of the Reliability Standard or the date of the latest Board of Trustees adoption to a revision of the Reliability Standard, whichever is later. If a Reliability Standard is approved by ANSI as an American National Standard, it shall be reviewed at least once every five years from the effective date of the Reliability Standard or the date of the latest Board of Trustees adoption to a revision of the Reliability Standard, whichever is later.

The *Reliability Standards Development Plan* shall include projects that address this five or ten-year review of Reliability Standards.

- If a Reliability Standard is nearing its five or ten-year review and has issues that need resolution, then the *Reliability Standards Development Plan* shall include a project for the complete review and associated revision of that Reliability Standard that includes addressing all outstanding governmental directives, all approved Interpretations, and all unresolved issues identified by stakeholders.
- If a Reliability Standard is nearing its five or ten-year review and there are no outstanding governmental directives, Interpretations, or unresolved stakeholder issues associated with that Reliability Standard, then the *Reliability Standards Development Plan* shall include a project solely for the “five-year review” of that Reliability Standard.

For a project that is focused solely on the five-year review, the Standards Committee shall appoint a review team of subject matter experts to review the Reliability Standard and recommend whether the American National Standard Institute-approved Reliability Standard should be reaffirmed, revised, or withdrawn. Each review team shall post its recommendations for a 45 calendar day formal stakeholder comment period and shall provide those stakeholder comments to the Standards Committee for consideration.

- If a review team recommends reaffirming a Reliability Standard, the Standards Committee shall submit the reaffirmation to the Board of Trustees for adoption and then to Applicable Governmental Authorities for approval. Reaffirmation does not require approval by stakeholder ballot.
- If a review team recommends modifying, or retiring a Reliability Standard, the team shall develop a SAR with such a proposal and the SAR shall be submitted to the Standards Committee for prioritization as a new project. Each existing Reliability Standard recommended for modification, or retirement shall remain in effect in accordance with the associated implementation plan until the action to modify or withdraw the Reliability Standard is approved by its ballot pool, adopted by the Board of Trustees, and approved by Applicable Governmental Authorities.

In the case of reaffirmation of a Reliability Standard, the Reliability Standard shall remain in effect until the next five or ten-year review or until the Reliability Standard is otherwise modified or withdrawn by a separate action.

## Section 14.0: Public Access to Reliability Standards Information

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### **14.1: Online Reliability Standards Information System**

The NERC Reliability Standards Staff shall maintain an electronic copy of information regarding currently proposed and currently in effect Reliability Standards. This information shall include current Reliability Standards in effect, proposed revisions to Reliability Standards, and proposed new Reliability Standards. This information shall provide a record, for at a minimum the previous five years, of the review and approval process for each Reliability Standard, including public comments received during the development and approval process.

### **14.2: Archived Reliability Standards Information**

The NERC Staff shall maintain a historical record of Reliability Standards information that is no longer maintained online. Archived information shall be retained indefinitely as practical, but in no case less than five years or one complete standard 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 Reliability Standards Staff of a written request.

## Section 15.0: Process for Updating Standard Processes

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### **15.1: Requests to Revise the Standard Processes Manual**

Any person or entity may submit a request to modify one or more of the processes contained within this manual. The Standards Committee shall oversee the handling of each request. The Standards Committee shall prioritize all requests, merge related requests, and respond to each sponsor within 30 calendar days.

The Standards Committee shall post the proposed revisions for a 45 (calendar) day formal comment period. Based on the degree of consensus for the revisions, the Standards Committee shall:

- a. Submit the revised process or processes for ballot pool approval;
- b. Repeat the posting for additional inputs after making changes based on comments received;
- c. Remand the proposal to the sponsor for further work; or
- d. Reject the proposal.

The Registered Ballot Body shall be represented by a ballot pool. The ballot procedure shall be the same as that defined for approval of a Reliability Standard, including the use of an Additional Ballot if needed. If the proposed revision is approved by the ballot pool, the Standards Committee shall submit the revised procedure to the Board for adoption. The Standards Committee shall submit to the Board a description of the basis for the changes, a summary of the comments received, and any minority views expressed in the comment and ballot process. The proposed revisions shall not be effective until approved by the NERC Board of Trustees and Applicable Governmental Authorities.

## Section 16.0: Waiver

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While it is NERC's intent to use its ANSI-accredited Reliability Standards development process for developing its Reliability Standards, NERC may need to develop a new or modified Reliability Standard, definition, Variance, or implementation plan under specific time constraints (such as to meet a time constrained regulatory directive) or to meet an urgent reliability issue such that there isn't sufficient time to follow all the steps in the normal Reliability Standards development process.

The Standards Committee may waive any of the provisions contained in this manual for good cause shown, but limited to the following circumstances:

- In response to a national emergency declared by the United States or Canadian government that involves the reliability of the Bulk Electric System or cyber attack on the Bulk Electric System;
- Where necessary to meet regulatory deadlines;
- Where necessary to meet deadlines imposed by the NERC Board of Trustees; or
- Where the Standards Committee determines that a modification to a proposed Reliability Standard or its Requirement(s), a modification to a defined term, a modification to an interpretation, or a modification to a variance has already been vetted by the industry through the standards development process or is so insubstantial that developing the modification through the processes contained in this manual will add significant time delay.

In no circumstances shall this provision be used to modify the requirements for achieving quorum or the voting requirements for approval of a standard.

A waiver request may be submitted to the Standards Committee by any entity or individual, including NERC committees or subgroups and NERC Staff. Prior to consideration of any waiver request, the Standards Committee must provide five business days notice to stakeholders.

Action on the waiver request will be included in the minutes of the Standards Committee. Following the approval of the Standards Committee to waive any provision of the Standard Process Manual, the Standards Committee will report this decision to the Standards Oversight and Technology Committee.<sup>33</sup> Actions taken pursuant to an approved waiver request will be posted on the Standard Project page and included in the next project announcement.

In addition, the Standards Committee shall report the exercise of this waiver provision to the Board of Trustees prior to adoption of the related Reliability Standard, Interpretation, definition or Variance.

Reliability Standards developed as a result of a waiver of any provision of the Standard Processes Manual shall not be filed with ANSI for approval as American National Standards.

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<sup>33</sup> Any entity may appeal a waiver decision or any other procedural decision by the Standards Committee pursuant to Section 8.0 of the NERC Standard Processes Manual.

## **Appendix 3B**

# **Procedures for Election of Members of the Standards Committee**

**Effective: October 4, 2013**

# Table of Contents

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Purpose..... 1

Responsibilities for This Procedure ..... 1

Guiding Principles ..... 1

Standards Committee Membership..... 1

Standards Committee Membership Term ..... 2

Standards Committee Officers ..... 2

Standards Committee Scope and Conduct of Business ..... 2

Segment Representative Nominations ..... 2

Segment Representative Elections ..... 4

Election Formula..... 4

Representation from Canada..... 5

Special Elections..... 6

Alternative Procedures..... 6

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## **Purpose**

This procedure is provided for use by the NERC standards Registered Ballot Body to facilitate the election of industry Segment<sup>1</sup> representatives to the NERC Standards Committee. This procedure is a default process that is available, on a voluntary basis, for the benefit of all Segments of the Registered Ballot Body. The use of alternative procedures is described in a later section.

## **Responsibilities for This Procedure**

The NERC Board of Trustees provides oversight of the election of Standards Committee members. The Board provides the authority for approval of this procedure and any revisions thereto, and monitors any Segment-specific procedures that may be developed to ensure they are consistent with established principles.

The Standards Committee shall be responsible for advising the Board regarding the use of this procedure or any revisions to the procedure.

Each Registered Ballot Body entity shall be responsible for actively participating in the nomination and election of Standards Committee representatives for each Segment in which the entity is a member.

The standards process manager (SPM) shall administer the implementation and maintenance of this procedure.

## **Guiding Principles**

This procedure supports a Reliability Standards development process that is open, inclusive, balanced, and fair. This procedure shall be interpreted in a manner that is consistent with NERC's mission of promoting the reliability of the North American Bulk Electric Systems, NERC Standard Processes Manual, NERC's reliability and market interface principles, and maintaining good standing as a standards developer accredited by the American National Standards Institute.

## **Standards Committee Membership**

Each valid<sup>2</sup> Segment shall be eligible to elect two voting members to represent the Segment on the Standards Committee. A Registered Entity may provide only one Standards Committee member, irrespective of the number of Segments in which the entity is registered. Each representative that is elected by a Segment to fill one of those positions shall serve on behalf of the Registered Ballot Body entities in that Segment. An eligible position on the Standards Committee that is not filled by a Segment shall be shown as vacant and shall not be counted in the determination of a quorum. Each elected member of the Standards Committee (except for the officers who do not vote) shall carry one vote.

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<sup>1</sup> Industry Segment criteria and a list of entities in the NERC standards Registered Ballot Body are provided on the NERC web site. In this procedure, the term "Segment" shall mean one of the currently defined industry Segments.

<sup>2</sup> Validity is determined by established Segment criteria, including the minimum number of entities in a Segment.



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## **Standards Committee Membership Term**

The Standards Committee reports to the NERC Board of Trustees and is responsible for managing the NERC Standard Processes Manual and other duties as assigned by the Board.

The Standards Committee also serves for the benefit of the members of the Registered Ballot Body and is accountable to them through election by the Segment representatives. Standards Committee membership shall be for a term of two years, with members' terms staggered such that half of the member positions (one per Segment) are refilled each year by Segment election. Prior to the end of each term, nominations will be received and an election held in accordance with this procedure, or a qualified Segment procedure, to elect Standards Committee representatives for the next term. There is no limit on the number of two-year terms that a member of the Standards Committee may serve, although the setting of limits in the future is not precluded.

## **Standards Committee Officers**

Approximately 90 days prior to the end of each term, the Standards Committee shall elect a chairman and vice chairman (from among its members by majority vote of the members of the Standards Committee) to serve as officers and preside over the business of the Standards Committee for the following two years. The officers shall serve a term of two years, starting in January of the following year, without limit on the number of terms an officer may serve, although the setting of limits in the future is not precluded. The chairman and vice chairman shall serve as non-voting members of the Standards Committee. The SPM serves as a non-voting member and secretary of the Standards Committee.

The vacancies in the Segments and/or Canadian representation created by the selection of the chair and vice chair shall be filled at the annual election of representatives to the Standards Committee that is next held following the election of the chairman and vice chairman. When a representative is elected to serve as the chairman or vice chairman during the second year of a two year term, the representative elected to fill the vacancy shall serve a one year term.

## **Standards Committee Scope and Conduct of Business**

The Standards Committee conducts its business in accordance with a separate scope document, the Standard Processes Manual, other applicable NERC procedures, and procedures that the Standards Committee itself may develop. This procedure addresses the nomination and election of members of the Standards Committee and is not intended to otherwise establish or limit the scope, authorities, or procedures of the Standards Committee.

## **Segment Representative Nominations**

Approximately 90 days prior to the start of each term and after the election of officers, the SPM shall request nominations to fill Standards Committee positions that will become open with the expiration of the current term.

Notice of the nominations process shall be announced to the Registered Ballot Body and to others that may be interested in standards for the reliability of North American Bulk Electric Systems. The SPM shall post the announcement on the NERC web page and distribute the

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announcement to applicable NERC e-mail lists. The announcement shall include a brief description of the responsibilities of the Standards Committee and estimates of the work effort and travel expected of Standards Committee members.

Any person or entity may submit a nomination. Self-nominations are encouraged.

To be eligible for nomination, a nominee shall be an employee or agent of an entity registered in the applicable Segment. To allow verification of affiliation, a nominee shall be a registered user in the NERC Registered Ballot Body. It is not required that the nominee be the same person as the entity's Registered Ballot Body representative for that Segment.

The SPM shall provide a method for the submittal of nominations, preferably an on-line nominations form using internet protocols. The nomination form shall request the following information and other information that the SPM deems necessary to completing the election process:

***Nomination Information***

1. Segment for which the nomination is made.
2. Nominee name (selected from list of registrants).
3. Nominee job title.<sup>3</sup>
4. Nominee organization (must be an entity registered in the designated Segment).<sup>3</sup>
5. Nominee contact information: telephone, fax, e-mail, and mailing address.<sup>3</sup>
6. Nominee brief summary of qualifications related to serving on the Standards Committee (limited to a 3,000-character text box — approximately 500 words or one-page, single-spaced).
7. Indication (check box) that the nominee has been contacted and is willing to serve on the Standards Committee for a two-year term.
8. Person or entity making the nomination.
9. Contact information for person or entity making nomination: contact name, organization, telephone, fax, e-mail, and mailing address.

The SPM shall verify that each nomination received is complete and valid. The SPM may follow up with nominees to collect additional information.

In the event that multiple nominations are received for persons from a single entity within a Segment, that entity's representative shall determine which person will be the nominee from that entity.

The SPM shall post each nomination that is complete and valid. Each nomination shall be posted as soon as practical after it has been verified.

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<sup>3</sup> Information items 3–5 are provided automatically from the nominee during registration.

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The nomination period shall remain open for 21 calendar days from the announced opening of the nominations, at which time the nominations shall be closed.

## **Segment Representative Elections**

The SPM shall prepare a slate of nominees for each Segment. The Segment slate shall consist of all valid nominations received for that Segment, without prejudice in the method of listing the slate.

The SPM shall provide an electronic ballot form for each Segment, listing the slate of nominees. Each Registered Ballot Body entity in a Segment may cast one vote per Standards Committee member position being filled (i.e. one vote if one position is being filled and two votes if two positions are being filled). In the case that an entity casts two votes within a Segment, each vote must be for a different candidate in that Segment (i.e. an entity cannot vote twice for a nominee within a Segment).

This ballot procedure is repeated for each Segment in which an entity is a member of the Registered Ballot Body. The ballot for each Segment is conducted independently from the ballots of other Segments. Only the entities in the Registered Ballot Body for a Segment may vote in that Segment.

The ballot period shall be announced to the Registered Ballot Body and to others that may be interested in standards for the reliability of North American Bulk Electric Systems. The SPM shall post the announcement on the NERC web page and distribute the announcement to applicable NERC e-mail lists.

The ballot period shall remain open for ten calendar days from the announced opening of the ballot period, at which time the ballot period shall be closed.

Votes may be cast by the Registered Ballot Body Representative for each entity, or a proxy designated by the representative. An entity may vote in each Segment in which it is registered.

Ballot results shall remain confidential during the ballot period. As soon as practical after the close of the ballot period, the SPM shall publicly post the election results for each Segment (i.e. the names of elected members and slates for any run-off elections that may be required).

## **Election Formula**

The elected Standards Committee member for each Segment shall be the nominee receiving the highest total number of votes, with the condition that the nominee must receive a vote from a simple majority of the entities casting a vote in that Segment. If the election is being held for two positions in a Segment, the nominees receiving the highest and second highest number of votes shall be elected, with the condition that each nominee must receive a vote from a simple

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majority of the entities casting a vote in that Segment<sup>4</sup>. In this case, if only one of the two nominees meets these criteria, then that nominee shall be deemed elected.

In the event that the election is incomplete in a Segment's first ballot (no candidate or only one candidate meets the criteria), then a second ballot will be conducted in that Segment, using a process similar to that previously described. If two positions are remaining to be filled in the second ballot, the slate of candidates shall consist of the four candidates receiving the highest number of votes in the first ballot. If one position is remaining to be filled in the second ballot, the slate shall consist of the two candidates receiving the highest number of votes. A candidate who was elected in the first ballot is considered elected and is excluded from the second ballot. In the event of a tie that precludes choosing the top four (or two) candidates, the slate will be expanded to include those candidates that are tied.

After the second ballot in the Segment, the candidate(s) receiving the highest number of votes shall be elected to fill the remaining position(s) in that Segment.

In the event of a tie between two or more candidates after a second ballot, a run-off ballot may be used to break the tie. The position shall remain vacant until the tie is broken by the Segment.

## **Representation from Canada**

To achieve balance of representation between the United States and Canada on the basis of Net Energy for Load (NEL), the following special procedure shall apply:

1. If any regular election of Standards Committee members does not result in at least two Canadian members being elected, the Canadian nominees receiving the next highest percentage of votes within their respective Segment(s) will be designated as members, as needed to achieve a total of two Canadian members;
2. Each such specially designated Canadian member of the Standards Committee shall have a one year term, as the Standards Committee holds elections each year and special designation of members should not interfere with the regular election process;
3. If any Segment has an unfilled position following the annual Standards Committee election, the first preference is to assign each specially designated Canadian representative to an unfilled Segment for which he or she qualifies;
4. Any such specially designated members of the Standards Committee shall have the same rights and obligations as all other members of the Standards Committee;
5. For the purpose of the Standards Committee election process, Canadian representation shall be defined as: any company or association incorporated in Canada, any agency of a federal, provincial, or local government in Canada, or any person with Canadian citizenship who is residing in Canada.

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<sup>4</sup> Each entity in the Segment is allowed to cast two votes. This criterion means that more than fifty percent (>50%) of the entities cast one of their votes for that nominee.

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## **Special Elections**

The Standards Committee's officers shall determine the need for a special election to fill a vacant Standards Committee position between regular elections considering, among other things, the timing of the last and the next regular election. If a need is determined, the Standards Committee officers shall communicate a request to the director of standards, who shall initiate a process to conduct the election. The SPM shall post a request for nominations on the NERC web page and distribute the announcement to applicable NERC e-mail lists, e.g., the Registered Ballot Body of the Segment(s) involved. The election will be held 30 days after the announcement and shall use the same election process and formula employed in regular elections. The Board of Trustees shall be notified of the election results.

## **Alternative Procedures**

This procedure is provided as the default method for Segments to elect representatives to the Standards Committee. Alternative procedures may be used by a Segment, or jointly by several Segments. Such a procedure shall be consistent with the principles noted in this document. Such a procedure shall be ratified by at least two-thirds of the Registered Entities in each Segment in which it will be applied, and is subject to review by the NERC Board.

## **Appendix 3D**

### **Registered Ballot Body Criteria**

**Effective: July 1, 2014**

**(as noted below)**

The highlighted term “Load” in this document will become effective as defined terms on July 1, 2014 in accordance with the Bulk Electric System Order (Order No. 773) and the June 13, 2013 Order Granting Extension of Time. See Appendix 2 of the Rules of Procedure.

# Appendix 3D — Development of the Registered Ballot Body<sup>1</sup>

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## ***Registration Procedures***

The Registered Ballot Body comprises all organizations, entities, and individuals that:

1. Qualify for one of the Segments, and
2. Are registered with NERC as potential ballot participants in the voting on Reliability Standards, and
3. Are current with any designated fees.

Each participant, when initially registering to join the Registered Ballot Body, and annually thereafter, shall self-select to belong to one of the Segments described below.

NERC general counsel will review all applications for joining the Registered Ballot Body, and make a determination of whether the self-selection satisfies at least one of the guidelines to belong to that Segment. The entity or individual will then be “credentialed” to participate as a voting member of that Segment. The Standards Committee will decide disputes, with an appeal to the Board of Trustees.

All registrations will be done electronically.

## ***Segment Qualification Guidelines***

1. Except as set forth below, the Segment qualification guidelines are inclusive; i.e., any entity or individual with a legitimate interest in the reliability of the Bulk Power System that can meet any one of the guidelines for a Segment is entitled to belong to and vote in that Segment.
2. Corporations or organizations with integrated operations or with affiliates that qualify to belong to more than one Segment (e.g., transmission owners and Load Serving Entities) may belong to each of the Segments in which they qualify, provided that each Segment constitutes a separate membership and is represented by a different representative. Individuals or entities that elect to participate in Segment 8 are not eligible to participate in multiple Segments.
3. At any given time, affiliated entities may collectively be registered only once within a Segment.
4. Any individual or entity, such as a consultant or vendor, providing products or services related to Bulk Power System reliability within the previous 12 months to another entity eligible to join Segments 1 through 7 shall be qualified to join any one Segment for which one of the entities receiving those products or services is qualified to join.
5. Corporations, organizations, entities, and individuals may participate freely in all subgroups.
6. After their initial selection, registered participants may apply to change Segments annually, on a schedule determined by the Standards Committee.

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<sup>1</sup> The Segment qualification guidelines were proposed in the final report of the NERC Standing Committees Representation Task Force on February 7, 2002. The Board of Trustees endorsed the industry Segments and weighted Segment voting model on February 20, 2002 and may change the model from time to time.

7. The qualification guidelines and rules for joining Segments will be reviewed periodically to ensure that the process continues to be fair, open, balanced, and inclusive. Public input will be solicited in the review of these guidelines.
8. Since all balloting of Reliability Standards will be done electronically, any registered participant may designate a proxy to vote on its behalf. There are no limits on how many proxies a person may hold. However, NERC must have in its possession, either in writing or by email, documentation that the voting right by proxy has been transferred.

## **Segments**

### **Segment 1.    *Transmission Owners***

- a. Any entity that owns or controls at least 200 circuit miles of integrated transmission facilities, or has an Open Access Transmission Tariff or equivalent on file with a regulatory authority.
- b. Transmission owners that have placed their transmission under the operational control of an RTO or ISO.
- c. Independent transmission companies or organizations, merchant transmission developers, and transcos that are not RTOs or ISOs.
- d. Excludes RTOs and ISOs that are eligible to join to Segment 2.

### **Segment 2.    *Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs)***

- a. Any entity authorized by appropriate governmental authority to operate as an RTO or ISO.

### **Segment 3.    *Load-Serving Entities (LSEs)***

- a. Entities serving end-use customers under a regulated tariff, a contract governed by a regulatory tariff, or other legal obligation to serve.
- b. A member of a generation and transmission (G&T) cooperative or a joint-action agency is permitted to designate the G&T or joint-action agency to represent it in this Segment; such designation does not preclude the G&T or joint-action agency from participation and voting in another Segment representing its direct interests.
- c. Agents or associations can represent groups of LSEs

### **Segment 4.    *Transmission Dependent Utilities (TDUs)***

- a. Entities with a regulatory, contractual, or other legal obligation to serve wholesale aggregators or customers or end-use customers and that depend primarily on the transmission systems of third parties to provide this service.
- b. Agents or associations can represent groups of TDUs.

### **Segment 5.    *Electric Generators***

- a. Affiliated and independent generators, including variable and other renewable resources.
- b. A corporation that sets up separate corporate entities for each one or more generating plants in which it is involved may only have one vote in this Segment regardless of how many single-plant or multiple-plant corporations the parent corporation has established or is involved in.
- c. Agents or associations can represent groups of electrical generators.



**Segment 6. Electricity Brokers, Aggregators, and Marketers**

- a. Entities serving end-use customers under a power marketing agreement or other authorization not classified as a regulated tariff.
- b. An entity that buys, sells, or brokers energy and related services for resale in wholesale or retail markets, whether a non-jurisdictional entity operating within its charter or an entity licensed by a jurisdictional regulator.
- c. G&T cooperatives and joint-action agencies that perform an electricity broker, aggregator, or marketer function are permitted to belong to this Segment.
- d. Agents or associations can represent groups of electricity brokers, aggregators, or marketers.
- e. This Segment also includes demand-side management providers.

**Segment 7. Large Electricity End Users**

- a. At least one service delivery taken at 50 kV (radial supply or facilities dedicated to serve customers) that is not purchased for resale.
- b. A single customer with an average aggregated service **Load** (not purchased for resale) of at least 50,000 MWh annually, excluding cogeneration or other back feed to the serving utility.
- c. Agents or associations can represent groups of large end users.

**Segment 8. Small Electricity Users**

- a. Service taken at below 50 kV.
- b. A single customer with an average aggregated service **Load** (not purchased for resale) of less than 50,000 MWh annually, excluding cogeneration or other back feed to the serving utility.
- c. Agents, state consumer advocates, or other advocate groups can represent groups of small customers.
- d. Any entity or individual currently employed by an entity that is eligible to join one or more of the other nine Segments, shall not be qualified to join Segment 8.
- e. Any individual or entity, such as a consultant, employee or vendor, providing products or services related to Bulk Power System reliability within the previous 12 months to another entity eligible to join Segments 1 through 7, including trade associations representing such Segments, shall be qualified to join any one Segment for which one of the entities receiving those products or services is qualified to join and shall not be eligible to join Segment 8.

**Segment 9. Federal, State, and Provincial Regulatory or other Government Entities**

- a. Does not include federal power management agencies or the Tennessee Valley Authority.
- b. May include public utility commissions.

**Segment 10. Regional Entities**

- a. Any entity that is a Regional Entity. It is recognized that there may be instances in which an entity is both an RTO or ISO and a Regional Entity. In such a case, the two functions must be sufficiently independent to meet NERC's Rules of Procedure and applicable regulatory requirements, as evidenced by the approval of a Regional Entity delegation agreement. Without such an approval, the entity shall be limited to choosing to enter one Segment or the other, but not both.



# NERC

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

## Appendix 4A

# Audit of Regional Entity Compliance **Programs**

Effective: October 4, 2013

## **Overview, Objective, and Scope**

The NERC Regional Entity audit program was established to assess the Regional Entity's implementation of the NERC Compliance Monitoring and Enforcement Program (CMEP) and determine whether the program, as implemented by the Regional Entity, effectively meets the requirements under the CMEP, the NERC Rules of Procedure (ROP), and the corresponding annual Compliance Monitoring and Enforcement Program Implementation Plan. Each year, NERC establishes which Reliability Standard Requirements will be placed into the CMEP through its annual Compliance Monitoring and Enforcement Program Implementation Plan. The scope of the Regional Entity audits includes the CMEP, related sections of the ROP, the annual Compliance Monitoring and Enforcement Program Implementation Plan as approved by NERC, and additional directives provided by NERC for implementing the CMEP and related ROP sections.

## **Scheduling**

Each Regional Entity Compliance Monitoring and Enforcement Program shall be audited at least once every five years. The schedule for the Regional Entity audit program is approved by NERC staff.

## **Audit Team**

- A member of NERC staff will be designated as the audit team lead (ATL) for the Regional Entity audits. In this role, the ATL maintains oversight of the auditing process, coordinates and facilitates the audit process steps with the Applicable Governmental Authorities, the Compliance and Certification Committee (CCC), and the audited Regional Entity.
- NERC staff will conduct the audit, in whole or in part.
- NERC may use external, independent auditors to conduct the audit, in whole or in part.
- A representative from the CCC may participate as an observer, at the discretion of the CCC.
- Representatives from Applicable Governmental Authorities may participate as observers.

Participation by a representative of an Applicable Governmental Authority shall be subject to the limitations of section 3.1.6 and 8.0 of Appendix 4C of the NERC Rules of Procedure regarding disclosure of non-public compliance information related to other jurisdictions.

In addition, Compliance Staff from other Regional Entities may participate as observers, with the mutual consent of NERC and of the compliance manager of the Regional Entity being audited.

## **Planning or Pre-Audit**

At least sixty (60) days prior to the on-site audit, the NERC ATL shall send a notification of intent to audit letter to the CEO of the Regional Entity to be audited, containing the scope of the audit and key audit dates; and shall send to the audited Regional Entity: (i) pre-audit questionnaire(s), and (ii) request(s) for information. The audited Regional Entity returns a

complete questionnaire to NERC, along with the requested reports and other documentation, thirty (30) days prior to the on-site audit.

The Regional Entity may request a planning conference with NERC to review audit scope, logistics, and other pertinent coordination matters to effectuate an efficient audit process.

### **On-Site Audit and Fieldwork**

Detailed questions related to the completed questionnaire(s) and requests for information are evaluated along with a random sampling of applicable evidence. The evidentiary review of documentation from the Regional Entity is used to determine whether the Regional Entity's program is effective and meeting the requirements described above. NERC shall evaluate the controls, physical security tools, staff training and internal procedures to meet the requirements of the Regional Entity audit program scope.

### **Reporting**

Upon completion of the on-site fieldwork, the audit team shall provide the Regional Entity with an exit briefing which shall include any preliminary findings and/or results from the examination. Within thirty (30) business days of the last day of on-site fieldwork, NERC shall provide the Regional Entity with a draft report which shall include a review of the scope, methodology, and evaluation of internal controls. The Regional Entity has thirty (30) business days to respond to the draft audit report and may request a conference with NERC to address any concerns with the draft report. Throughout this entire process, the information provided, discussions held, and the draft report will be kept confidential.

NERC will issue a final report to the Regional Entity forty-five (45) business days after the receipt of the Regional Entity's comments to the draft report. The audited Regional Entity is provided an opportunity to respond to the audit conclusions. The final report, along with the Regional Entity's response, are posted on the NERC web site after NERC presents the final report to the NERC Board of Trustees Compliance Committee.

The Regional Entity shall develop a corrective action plan to resolve the findings, if any, of the audit report and shall provide quarterly updates to NERC on the status of the corrective actions until completed.



**Sanction Guidelines  
of the  
North American  
Electric Reliability Corporation**

**Effective: July 1, 2014  
(as noted below)**

The highlighted term “Load” in footnote 7 will become effective as a defined term on July 1, 2014 in accordance with the Bulk Electric System Order (Order No. 773) and the June 13, 2013 Order Granting Extension of Time. See Appendix 2 of the Rules of Procedure.

**Table of Contents**

**1. Overview .....1**

**2. Basic Principles .....2**

2.1 Settlement of Compliance Violations .....2

2.2 Timing of Determination of Penalty, Sanction or Remedial Action Directive .....2

2.3 Reasonable Relationship to Violation .....2

2.4 Use of Factors to Determine Penalties .....2

2.5 Multiple Violations.....2

2.6 Relation of the Penalty to the Seriousness of the Violation and Violator’s Ability to Pay .....3

2.7 Violation Time Horizon .....4

2.8 Extenuating Circumstances .....4

2.9 Concealment or Intentional Violation .....4

2.10 Economic Choice to Violate.....4

2.11 No Influence by Outcome of Economic Choice to Violate .....5

2.12 Non-Monetary Sanctions or Remedial Actions .....5

2.13 Non-Exclusiveness of Monetary Penalties or Non-Monetary Sanctions.....5

2.14 Monetization of the Value of Sanctions .....5

2.15 Maximum Limitations on Penalties.....5

2.16 Frequency and Duration of Violations.....6

**3. Determination of Monetary Penalties .....8**

3.1 Initial Value Range of the Base Penalty Amount.....8

3.1.1 Violation Risk Factor.....8

3.1.2 Violation Severity Level.....8

3.2 Setting of the Base Penalty Amount.....9

3.2.1 Applicability of the Violation Risk Factor .....9

3.2.2 First Violation.....9

3.3 Application of Adjustment Factors.....10

3.3.1 Repetitive Violations and Compliance History .....10

3.3.2 Failure to Comply with a Remedial Action Directive or with Agreed Corrective or Mitigating Activity .....11

3.3.3 Disclosure of the Violation Through Self-Reporting and Voluntary Mitigating Activities by the Violator .....11

3.3.4 Degree and Quality of Cooperation.....11

3.3.5 Presence and Quality of Violator’s Internal Compliance Program .....11

3.3.6 Settlement .....11

3.3.7 Violation Concealment and Non-Responsiveness .....11

3.3.8 Intentional Violation.....12

3.3.9 Extenuating Circumstances .....12

3.4 Setting of the Final Penalty Amount .....12

3.4.1 Violator’s Financial Ability to Pay.....12

3.4.2 Confirmation of Disgorgement of Unjust Profit or Gain.....12

**4. Determination of Non-Monetary Sanctions.....13**

**Appendix A: Base Penalty Amount Table.....14**

## 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”<sup>1</sup>) 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.

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<sup>1</sup> 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 Factors<sup>2</sup> 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

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<sup>2</sup> See Section 3.1.1 for a discussion of these factors  
*NERC Sanction Guidelines*  
Effective: July 1, 2014

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 Requirement<sup>3</sup>. Accordingly, the time horizon element of a violation will be considered when determining the Base Penalty Amount<sup>4</sup> 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.

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<sup>3</sup> See Section 3.1 for a discussion of these factors.

<sup>4</sup> 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 violation<sup>5</sup>. 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.<sup>6</sup>

##### **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.

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<sup>5</sup> 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.

<sup>6</sup> 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 circumstances<sup>7</sup> 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.

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<sup>7</sup> 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 Pay<sup>8</sup>**

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.

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<sup>8</sup> 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
<b>Lower</b>	\$1,000	\$3,000	\$2,000	\$7,500	\$3,000	\$15,000	\$5,000	\$25,000
<b>Medium</b>	\$2,000	\$30,000	\$4,000	\$100,000	\$6,000	\$200,000	\$10,000	\$335,000
<b>High</b>	\$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**

**Compliance Monitoring and Enforcement Program**

**APPENDIX 4C TO THE RULES OF PROCEDURE**

**Effective: May 4, 2016**

## TABLE OF CONTENTS

<b>1.0</b>	<b>INTRODUCTION.....</b>	<b>1</b>
1.1	Definitions.....	1
<b>2.0</b>	<b>IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS .....</b>	<b>1</b>
<b>3.0</b>	<b>COMPLIANCE MONITORING PROCESSES.....</b>	<b>2</b>
3.1	Compliance Audits.....	3
3.2	Self-Certifications .....	9
3.3	Spot Checks .....	10
3.4	Compliance Investigations .....	11
3.5	Self-Reports .....	14
3.5A	Self-Logging.....	15
3.6	Periodic Data Submittals.....	15
3.7	Complaints.....	16
3.8	Preliminary Screen .....	17
<b>3A.0</b>	<b>ENFORCEMENT DISCRETION.....</b>	<b>18</b>
3A.1	Compliance Exception Process .....	18
<b>4.0</b>	<b>ANNUAL IMPLEMENTATION PLANS .....</b>	<b>19</b>
4.1	NERC Compliance Monitoring and Enforcement Program Implementation Plan.....	19
4.2	Regional Implementation Plan .....	19
<b>5.0</b>	<b>ENFORCEMENT ACTIONS.....</b>	<b>19</b>
5.1	Notice of Possible Violation.....	20
5.2	Assessment of Possible Violation .....	21
5.2A	FFT Process .....	21
5.3	Notification to Registered Entity of Alleged Violation .....	21
5.4	Registered Entity Response.....	23
5.5	Hearing Process for Compliance Hearings.....	23
5.6	Settlement Process .....	23
5.7	NERC Appeal Process .....	24
5.8	Notification of Confirmed Violation.....	25
5.9	Notice of Penalty .....	25
5.10	Completion of Enforcement Action.....	26
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..	26
<b>6.0</b>	<b>MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS .....</b>	<b>31</b>
6.1	Requirement for Submission of Mitigation Plans.....	31
6.2	Contents of Mitigation Plans.....	32
6.3	Timetable for Completion of Mitigation Plans .....	32

**Compliance Monitoring and Enforcement Program**

**6.4 Submission of Mitigation Plans ..... 33**  
**6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans ..... 34**  
**6.6 Completion/Confirmation of Implementation of Mitigation Plans..... 35**  
**6.7 Recordkeeping..... 36**

**7.0 REMEDIAL ACTION DIRECTIVES..... 36**

**8.0 REPORTING AND DISCLOSURE..... 37**

**8.1 Information to be Reported ..... 37**  
**8.2 Reporting to Applicable Governmental Authorities and Public Disclosure ... 38**

**9.0 DATA RETENTION AND CONFIDENTIALITY ..... 39**

**9.1 Records Management ..... 39**  
**9.2 Retention Requirements..... 39**  
**9.3 Confidentiality and Critical Energy Infrastructure Information ..... 39**

**ATTACHMENT 1 – PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA**

**ATTACHMENT 2 – COMPLIANCE ENFORCEMENT AUTHORITY HEARING PROCEDURES**



## **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.

#### **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.

## **Compliance Monitoring and Enforcement Program**

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**

NERC, with input from the Regional Entities, stakeholders, and regulators, shall at least annually identify risk elements and related NERC Reliability Standards and Requirements to be considered in the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan (Implementation Plan). NERC identifies the risk elements using data including, but not limited to: compliance findings; event analysis experience; data analysis; and the expert judgment of NERC and Regional Entity staff, committees, and subcommittees. NERC uses these risk elements to identify and prioritize continent-wide risks to the reliability of the Bulk Power System. These identified risks represent the focus for oversight activities in the upcoming year, and become inputs for developing oversight plans for individual Registered Entities.

The Compliance Enforcement Authority will monitor Registered Entities' compliance with Reliability Standards using the compliance monitoring processes described in this Section. A Compliance Enforcement Authority will determine the type and frequency of application of the compliance monitoring tools appropriate for a particular Registered Entity based on the Registered Entity's specific risks to the reliability of the Bulk Power System.

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 Screen criteria, a Possible Violation exists and the Compliance Enforcement Authority will proceed in accordance with Section 5.0, Enforcement Actions, except as otherwise authorized in these Rules of Procedure.

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 Monitoring and Enforcement Program**

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 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 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,

## **Compliance Monitoring and Enforcement Program**

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.

### **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

## **Compliance Monitoring and Enforcement Program**

(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 determined through the NERC approved risk-based processes described herein, 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.

Regional Entities will tailor the final scope of any Compliance Audit based on the results of the Registered Entity's Inherent Risk Assessment and, if applicable, taking into consideration the results of an Internal Controls Evaluation. Except as otherwise required in the Rules of Procedure, the Compliance Enforcement Authority may use any process herein, in addition to, or in lieu of a Compliance Audit to monitor compliance with Reliability Standards.

#### **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 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,

## **Compliance Monitoring and Enforcement Program**

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 not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the Compliance Enforcement Authority is applicable.
- Successfully complete all NERC or NERC-approved Regional Entity auditor training applicable to the Compliance Audit.

## **Compliance Monitoring and Enforcement Program**

- 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.

### **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 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

## **Compliance Monitoring and Enforcement Program**

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 of NERC staff in the Compliance Audit or to limit the participation of FERC staff in a Compliance Audit of a Registered Entity, or involving a portion of the Bulk Power System, over which FERC has jurisdiction.

### **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 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



## **Compliance Monitoring and Enforcement Program**

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.
- 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.

## **Compliance Monitoring and Enforcement Program**

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 Section 3.1 shall be read to limit the participation of NERC staff in a Spot Check or to limit the participation 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.
- 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.

## **Compliance Monitoring and Enforcement Program**

- 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.

Compliance Investigations will generally be led by the Regional Entity's staff. NERC reserves the right to assume the leadership of a Compliance Investigation.<sup>1</sup> 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

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<sup>1</sup>Examples 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.

## **Compliance Monitoring and Enforcement Program**

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 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

## Compliance Monitoring and Enforcement Program

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 by NERC, by FERC staff or by staff of another Applicable Governmental Authority having reliability jurisdiction over the Registered Entity in the Compliance Investigation. 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 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.

## **Compliance Monitoring and Enforcement Program**

- 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:

- 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.

## **Compliance Monitoring and Enforcement Program**

### **3.5A Self-Logging**

Registered Entities found by the Compliance Enforcement Authority to be eligible, after a formal review of internal controls, pursuant to procedures adopted by NERC and the Regional Entities and provided to Applicable Governmental Authorities, may be granted approval by the Compliance Enforcement Authority to log noncompliance for subsequent review in lieu of submitting a Self-Report. The log shall be limited to noncompliance posing a minimal risk to the reliability of the Bulk Power System unless otherwise authorized by an Applicable Governmental Authority. Approved Registered Entities shall maintain a log with a detailed description of the noncompliance, the risk assessment, and the mitigating activities completed or to be completed. There is a rebuttable presumption that noncompliance logged in this manner will be resolved as a Compliance Exception. The Compliance Enforcement Authority will review the logs at least every three (3) months, with the possibility of extending the review period to six (6) months, and will make the logs available for review, upon request, by NERC and Applicable Governmental Authorities.

### **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.

## **Compliance Monitoring and Enforcement Program**

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



## **Compliance Monitoring and Enforcement Program**

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.<sup>2</sup> 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:

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<sup>2</sup>NERC 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](http://www.nerc.com) for additional information).

## **Compliance Monitoring and Enforcement Program**

- (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 the Compliance Exception Process is used in accordance with Section 3A.1.

The Compliance Enforcement authority shall maintain records of all Preliminary Screens.

### **3A.0 ENFORCEMENT DISCRETION**

Not all instances of noncompliance with Reliability Standards require the same type of processing and documentation. Noncompliance that does not pose a serious or substantial risk to the reliability of the Bulk Power System may be resolved through streamlined processes, when appropriate, consistent with processes approved by NERC and Applicable Governmental Authorities.

Absolute adherence to the enforcement process set out in section 5.0 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.

The Find, Fix, Track and Report and the Compliance Exception processes are alternatives to the process outlined in section 5.0.

#### **3A.1 Compliance Exception Process**

The Compliance Exception process may be used to address noncompliance posing a minimal risk to the reliability of the Bulk Power System, unless an Applicable Governmental Authority authorizes expansion of the program. Compliance Exceptions are not included in a Registered Entity's compliance history for penalty purposes. However, a Compliance Enforcement Authority must (a) consider a history of Compliance Exceptions where the failure to fully remediate the underlying compliance matter contributes to a subsequent serious or substantial noncompliance and (b) assess subsequent noncompliance to determine whether a Registered Entity should continue to qualify for Compliance Exception treatment.

The Compliance Exception process requires that:

- (1) The Registered Entity mitigates the noncompliance; and

## **Compliance Monitoring and Enforcement Program**

- (2) The facts and circumstances of the noncompliance, including those associated with the determination of the level of risk and the related mitigation, are available for review by NERC and Applicable Governmental Authorities; and
- (3) The noncompliance is tracked and analyzed as necessary and appropriate to identify emerging risks and other pertinent trends; and
- (4) The Registered Entity is provided the opportunity to object to the use of the Compliance Exception Process to resolution of the noncompliance.

Changes to the processes and principles articulated in this section must be approved by Applicable Governmental Authorities.

### **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 identify risk elements related to the Reliability Standards to be considered for compliance oversight by the Compliance Enforcement Authority. 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 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*

## **Compliance Monitoring and Enforcement Program**

*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. Unless the Compliance Exception process in Section 3A.1 is used to address the Possible Violation, 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

## **Compliance Monitoring and Enforcement Program**

- (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 or receiving information on a Compliance Exception (whether resulting from Self-Logging or not), 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, or information on a Compliance Exception (whether resulting from Self-Logging or not), 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 or resolved through the Find, Fix, Track and Report process in section 5.2A.

#### **5.2A FFT Process**

The Find, Fix, Track and Report process may be used to address noncompliance posing a minimal or moderate risk to the reliability of the Bulk Power System.

The FFT process requires that:

- (1) The Registered Entity mitigates the noncompliance; and
- (2) The facts and circumstances of the noncompliance, including those associated with the determination of the level of risk and the related mitigation, are available for review by NERC and Applicable Governmental Authorities; and
- (3) FFTs are tracked and analyzed as necessary by NERC as appropriate to identify emerging risks and other pertinent trends; and
- (4) The Registered Entity is provided the opportunity to object to the use of the FFT process to resolution of the noncompliance.

### **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

## Compliance Monitoring and Enforcement Program

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 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

## **Compliance Monitoring and Enforcement Program**

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.

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

## **Compliance Monitoring and Enforcement Program**

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. 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**



## **Compliance Monitoring and Enforcement Program**

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.

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

## **Compliance Monitoring and Enforcement Program**

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 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

## **Compliance Monitoring and Enforcement Program**

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
- (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.

## **Compliance Monitoring and Enforcement Program**

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 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

## **Compliance Monitoring and Enforcement Program**

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 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

## **Compliance Monitoring and Enforcement Program**

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**

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

## **Compliance Monitoring and Enforcement Program**

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. 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

## **Compliance Monitoring and Enforcement Program**

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).
- 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



## **Compliance Monitoring and Enforcement Program**

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.

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

## **Compliance Monitoring and Enforcement Program**

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.

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.

## **Compliance Monitoring and Enforcement Program**

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 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

## **Compliance Monitoring and Enforcement Program**

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.
- 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.

## **Compliance Monitoring and Enforcement Program**

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 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.

## **Compliance Monitoring and Enforcement Program**

- (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.

### **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), with the identity of the

## **Compliance Monitoring and Enforcement Program**

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 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 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 CMEP activities, including but not limited to, Self-Logging, 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.

## **Compliance Monitoring and Enforcement Program**

### **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.



## Compliance Monitoring and Enforcement Program

### 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.
- Step 2: 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

## **Compliance Monitoring and Enforcement Program**

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**

**TABLE OF CONTENTS**

<b>1.1</b>	<b>Applicability, Definitions and Interpretation.....</b>	<b>1</b>
1.1.1	Procedure Governed.....	1
1.1.2	Deviation .....	1
1.1.3	Standards for Discretion .....	2
1.1.4	Interpretation .....	2
1.1.5	Definitions.....	3
<b>1.2</b>	<b>General Provisions including Filing, Service, Transcription and Participation</b>	<b>5</b>
1.2.1	Contents of Filings .....	5
1.2.2	Form of Filings .....	5
1.2.3	Submission of Documents.....	6
1.2.4	Service .....	7
1.2.5	Computation of Time.....	8
1.2.6	Extensions of Time.....	8
1.2.7	Amendments.....	8
1.2.8	Transcripts.....	8
1.2.9	Rulings, Notices, Orders and Other Issuances.....	9
1.2.10	Location of Hearings and Conferences .....	9
1.2.11	Participant Participation.....	9
1.2.12	Interventions.....	9
1.2.13	Proceedings Closed to the Public.....	11
1.2.14	Docketing System .....	11
1.2.15	Representations Deemed to be Made in All Pleadings .....	11
1.2.16	Hold Harmless.....	12
<b>1.3</b>	<b>Initiation of the Hearing Process .....</b>	<b>12</b>
1.3.1	Registered Entity’s Option to Request a Hearing.....	12
1.3.2	Compliance Staff’s Response to Request for Hearing.....	14
1.3.3	Notice of Hearing .....	14
1.3.4	Shortened Hearing Procedure .....	14
<b>1.4</b>	<b>General Hearing Procedure.....</b>	<b>16</b>
1.4.1	[Intentionally Left Blank].....	16
1.4.2	Hearing Officer .....	16
1.4.3	Hearing Body.....	17
1.4.4	Interlocutory Review .....	18
1.4.5	Disqualification .....	19
1.4.6	Technical Advisor .....	20
1.4.7	No Ex Parte Communications.....	20
1.4.8	Appearances .....	21
1.4.9	Failure to Appear or Exercise Diligence.....	22
1.4.10	Consolidation of Proceedings.....	22
<b>1.5</b>	<b>Prehearing Procedure.....</b>	<b>22</b>
1.5.1	[Intentionally Left Blank].....	22
1.5.2	Prehearing Conference.....	23
1.5.3	Summary Disposition.....	24
1.5.4	Status Hearings .....	24

	1.5.5	Motions and Responses.....	25
	1.5.6	Experts .....	25
	1.5.7	Inspection and Copying of Documents in Possession of Staff.....	25
	1.5.8	Other Discovery Procedures .....	28
	1.5.9	Pre-Evidentiary Hearing Submission of Testimony and Evidence .....	30
	1.5.10	Protective Orders .....	32
	1.5.11	Pre-Evidentiary Hearing Memorandum .....	33
	1.5.12	Certification of Questions to the NERC Board of Trustees .....	33
1.6		Procedure at Evidentiary Hearing .....	34
	1.6.1	Purpose of Evidentiary Hearing .....	34
	1.6.2	Order of Receiving Evidence .....	34
	1.6.3	Opening and Closing Statements.....	34
	1.6.4	Right of Participant to Present Evidence.....	34
	1.6.5	Exhibits .....	35
	1.6.6	Witness Attendance at Testimonial Hearing.....	35
	1.6.7	Admission of Evidence.....	35
	1.6.8	Evidence that is Part of a Book, Paper or Document .....	36
	1.6.9	Stipulations .....	36
	1.6.10	Official Notice.....	37
	1.6.11	Admissibility of Evidence .....	37
	1.6.12	Offer of Proof .....	38
	1.6.13	Reservation of Evidentiary Ruling.....	38
	1.6.14	Cross-Examination .....	38
	1.6.15	Redirect Examination .....	38
	1.6.16	Examination of Adverse Participant.....	38
	1.6.17	Close of the Evidentiary Record .....	39
1.7		Post-Evidentiary Hearing Procedure .....	39
	1.7.1	Briefs .....	39
	1.7.2	Other Pleadings .....	39
	1.7.3	Draft Initial Opinions .....	39
	1.7.4	Hearing Officer’s Initial Opinion .....	40
	1.7.5	Exceptions.....	40
	1.7.6	Oral Argument .....	40
	1.7.7	Additional Hearings.....	40
	1.7.8	Hearing Body Final Order .....	40
	1.7.9	The Record .....	42
	1.7.10	Appeal .....	43
1.8		Settlement .....	43
1.9		Remedial Action Directives .....	43
	1.9.1	Initiation of Remedial Action Directive Hearing .....	43
	1.9.2	Remedial Action Directive Hearing Procedure.....	44

## 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:

- (1) 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.

**APPENDIX 4D TO THE RULES OF PROCEDURE**

**PROCEDURE FOR REQUESTING AND RECEIVING  
TECHNICAL FEASIBILITY EXCEPTIONS TO NERC  
CRITICAL INFRASTRUCTURE PROTECTION  
STANDARDS**

**Effective: July 1, 2016**

## TABLE OF CONTENTS

1.0	INTRODUCTION .....	1
1.1.	Purpose .....	1
1.2.	Authority .....	1
1.3.	Scope .....	1
1.4	Obligations of Canadian Entities and Cross-Border Regional Entities.....	2
2.0.	DEFINITIONS.....	2
3.0.	BASIS FOR APPROVAL OF A TECHNICAL FEASIBILITY EXCEPTION .....	2
4.0.	FORM, CONTENTS AND SUBMISSION OF A TFE REQUEST OR MATERIAL CHANGE REPORT.....	4
4.1.	Submissions for a TFE Request or Material Change Report .....	4
4.2.	Form and Format of TFE Request or Material Change Report.....	4
4.3.	[Deleted].....	5
4.4	Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information Included in Required Information..	5
4.5	[Deleted].....	5
5.0	REVIEW AND APPROVAL/DISAPPROVAL OF TFE REQUESTS OR MATERIAL CHANGE REPORTS .....	6
5.1.	Identification of TFE Requests or Material Change Reports.....	6
5.2	Review of TFE Request or Material Change Report for Approval or Disapproval.....	6
5.3	No Findings of Violations or Imposition of Penalties for Violations of an Applicable Requirement for the Period a TFE Request or Material Change Report is Being Reviewed .....	9
6.0	IMPLEMENTATION AND REPORTING BY THE RESPONSIBLE ENTITY PURSUANT TO AN APPROVED TFE OR MATERIAL CHANGE REPORT .....	10
7.0	AMENDMENT OF A PENDING TFE REQUEST.....	11
8.0	COMPLIANCE AUDIT REQUIREMENTS RELATING TO APPROVED TFE.....	11
9.0	TERMINATION OF AN APPROVED TFE.....	11
10.0	HEARINGS AND APPEALS PROCESS FOR RESPONSIBLE ENTITY .....	12
11.0	CONSISTENCY IN APPROVAL AND DISAPPROVAL OF TFE REQUESTS AND MATERIAL CHANGE REPORTS.....	12
12.0	CONFIDENTIALITY OF TFE REQUESTS, MATERIAL CHANGE REPORTS AND RELATED INFORMATION .....	14

13.0	ANNUAL REPORT TO FERC AND OTHER APPLICABLE GOVERNMENTAL AUTHORITIES .....	15
13.1.	Contents of Annual Report.....	15
13.2.	[Deleted] .....	16
13.3.	[Deleted] .....	16
13.4.	Annual Report to be a Public Document; Confidential Appendix .....	16
13.5.	Responsible Entities Must Cooperate in Preparation of Annual Report .....	17

## **PROCEDURE FOR REQUESTING AND RECEIVING TECHNICAL FEASIBILITY EXCEPTION TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS**

### **1.0 INTRODUCTION**

#### **1.1. Purpose**

This Appendix to the Rules of Procedure of the North American Electric Reliability Corporation (NERC) provides the procedure by which a Responsible Entity may request and receive an exception from Strict Compliance with the terms of a Requirement of certain NERC Critical Infrastructure Protection (CIP) Standards on the grounds of technical feasibility or technical limitations. Such an exception is referred to herein as a Technical Feasibility Exception (TFE).<sup>1</sup>

#### **1.2. Authority**

This Appendix is a NERC Rule of Procedure and an Electric Reliability Organization rule. This Appendix has been approved by (i) the NERC Board of Trustees and (ii) FERC. Any future revisions to this Appendix must be adopted in accordance with Article XI, section 2 of the NERC *Bylaws* and Section 1400 of the NERC *Rules of Procedure*, including approval by the NERC Board of Trustees and by FERC, in order to become effective.

#### **1.3. Scope**

This procedure for requesting and obtaining approval of TFEs is applicable only to those Requirements of the CIP Standards that: (i) expressly provide that compliance with the terms of a Requirement or Requirement Part is required where technically feasible; or (ii) FERC has directed that the Requirement or Requirement Part should be subject to this procedure. Requirements or Requirement Parts subject to TFEs are referred to herein as Applicable Requirements. NERC shall maintain a list of Applicable Requirements on its website, which shall be updated if any subsequent modifications to the CIP Standards or a FERC order necessitate changes to the list of Applicable Requirements.<sup>2</sup> Requirements or Requirement Parts of the CIP Standards may become Applicable

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<sup>1</sup> The United States Federal Energy Regulatory Commission (FERC) granted NERC the authority to implement such a procedure in Order No. 706. *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706 122 FERC ¶ 61,040 at PP 157-222 (2008).

<sup>2</sup> In the United States, as of July 1, 2016, the Applicable Requirements are:

- CIP-005-5, Requirement R1, Part 1.4.
- CIP-005-5, Requirement R2, Parts 2.1, 2.2, and 2.3.
- CIP-006-6, Requirement R1, Part 1.3.
- CIP-007-6, Requirement R1, Part 1.1
- CIP-007-6, Requirement R4, Part 4.3;
- CIP-007-6, Requirement R5, Parts 5.1, 5.6, and 5.7.

Requirements as the result of revisions to the CIP Standards in accordance with the NERC *Bylaws* and *Rules of Procedure*, including Appendix 3A (*Standards Process Manual*), or as a result of a FERC directive.

#### **1.4 Obligations of Canadian Entities and Cross-Border Regional Entities**

A Responsible Entity that is a Canadian Entity seeking a TFE shall work with the Regional Entity, NERC, and Applicable Governmental Authorities, to the extent permitted under Canadian federal or provincial laws, and without being obligated to authorize the disclosure of information prohibited by Canadian federal or provincial law from disclosure to FERC or other Applicable Governmental Authorities in the U.S., to comply with the requirements of this Appendix. A Canadian Entity shall not be required to subject itself to United States federal or state laws not otherwise applicable to the Canadian Entity in order to utilize this Appendix to obtain a TFE. Cross-Border Regional Entities shall implement this TFE Procedure in a manner consistent with their memoranda of understanding with Canadian Entities and Canadian Applicable Governmental Authorities concerning compliance monitoring and enforcement activities in particular provinces.

#### **2.0. DEFINITIONS**

For purposes of this Appendix, capitalized terms shall have the definitions set forth in Appendix 2 to the Rules of Procedure.

#### **3.0. BASIS FOR APPROVAL OF A TECHNICAL FEASIBILITY EXCEPTION**

**3.1.** A Responsible Entity may request and obtain approval for a TFE on the grounds that Strict Compliance with an Applicable Requirement, evaluated in the context or environment of the Responsible Entity's Covered Asset that is the subject of the TFE Request:

- (i) is not technically possible or is precluded by technical limitations; or
- (ii) is operationally infeasible or could adversely affect reliability of the Bulk Electric System to an extent that outweighs the reliability benefits of Strict Compliance with the Applicable Requirement; or
- (iii) while technically possible and operationally feasible, cannot be achieved by the Responsible Entity's Compliant Date for the Applicable Requirement due to factors such as, for example, scarce technical resources, limitations on the availability of required equipment or components, or the need to construct, install or modify equipment during planned outages; or
- (iv) would pose safety risks or issues that, in the determination of the Regional Entity, outweigh the reliability benefits of Strict Compliance with the Applicable Requirement; or

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- CIP-010-2, Requirement R1, Part 1.5.
  - CIP-010-2, Requirement R3, Part 3.2.

(v) would conflict with, or cause the Responsible Entity to be non-compliant with, a separate statutory or regulatory requirement applicable to the Responsible Entity, the Covered Asset or the related Facility that must be complied with and cannot be waived or exempted; or

(vi) would require the incurrence of costs that, in the determination of the Regional Entity, far exceed the benefits to the reliability of the Bulk Electric System of Strict Compliance with the Applicable Requirement, such as requiring the retirement of existing equipment that is not capable of Strict Compliance with the Applicable Requirement but is far from the end of its useful life and replacement with newer-generation equipment that is capable of Strict Compliance, where the incremental risk to the reliable operation of the Covered Asset and to the Reliable Operation of the related Facility and the Bulk Electric System of continuing to operate with the existing equipment is minimal in the determination of the Regional Entity.

**3.2.** A TFE does not relieve the Responsible Entity of its obligation to comply with the Applicable Requirement. Rather, a TFE authorizes an alternative (to Strict Compliance) means of compliance with the Applicable Requirement through the use of compensating measures and/or mitigating measures that achieve at least a comparable level of security for the Bulk Electric System as would Strict Compliance with the Applicable Requirement.

**3.3.** The burden to justify approval of a TFE Request in accordance with the provisions of this Appendix is on the Responsible Entity. It is the responsibility of the Regional Entity, subject to oversight by NERC as provided in this Appendix, to make all determinations as to whether a TFE Request has met the criteria for approval.<sup>3</sup> NERC and the Regional Entities shall carry out the activities described in Section 11.0 of this Appendix to provide consistency in the review and approval or disapproval of TFE Requests across Regional Entities and across TFE Requests.

**3.4.** A TFE Request may be approved without a specified TFE Expiration Date. However, in the event of a Material Change to the facts underlying an approved TFE, the Responsible Entity shall submit a Material Change Report providing continuing justification for the TFE or verifying Strict Compliance with the Applicable Requirement has been achieved.

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<sup>3</sup> If a Regional Entity that is also Responsible Entity seeks a TFE in its role as a Responsible Entity, the Regional Entity shall submit its TFE Request to, as applicable, NERC or the Regional Entity that has assumed, by agreement approved by NERC and FERC, compliance monitoring and enforcement responsibilities with respect to the first Regional Entity's registered functions, as applicable. In such case NERC or the second Regional Entity, as applicable, will perform the duties and responsibilities of the "Regional Entity" specified in this Appendix.

#### **4.0. FORM, CONTENTS AND SUBMISSION OF A TFE REQUEST OR MATERIAL CHANGE REPORT**

##### **4.1. Submissions for a TFE Request or Material Change Report**

A Responsible Entity may submit a single TFE Request or Material Change Report for a TFE from the same Applicable Requirement for multiple Covered Assets at one or more locations when all of the following criteria are met:

- (i) The Covered Assets are within the purview of the same Regional Entity.
- (ii) The basis for the TFE is the same for all Covered Assets.
- (iii) The Covered Assets will use the same compensating measures and/or mitigating measures.
- (iv) The same proposed TFE Expiration Date applies to all of the Covered Assets listed in the request.

##### **4.2. Form and Format of TFE Request or Material Change Report**

A TFE Request or a Material Change Report for one or more Covered Assets shall consist of the following Required Information:

- (i) Category (or categories) of Covered Asset(s) (e.g., BES Cyber System, Electronic Access Control or Monitoring System, etc.).
- (ii) Covered Asset ID (assigned by the Responsible Entity).
- (iii) Physical location(s) of Covered Asset(s).
- (iv) Actual or estimated date on which Covered Asset is placed into production.
- (v) Proposed TFE Expiration Date (if any).
- (vi) Actual TFE Expiration Date (if any).
- (vii) CIP Standard.
- (viii) Applicable Requirement.
- (ix) Whether the TFE is also filed with other Regional Entities (if yes, which ones).
- (x) Basis for approval (pursuant to Section 3.0).
- (xi) Compensating and mitigating measures.
- (xii) Date of completion of compensating and mitigating measures (if in progress, estimated completion date and time schedule).
- (xiii) Whether the TFE is related to compliance monitoring and enforcement activity, e.g., self-certification, self-report, audit, etc.
- (xiv) Whether the TFE has been previously approved.
- (xv) TFE I.D., if known.



- (xvi) A statement, signed and dated by the Responsible Entity's CIP Senior Manager or Delegate, that the CIP Senior Manager or Delegate has read the TFE Request or Material Change Report and approved the proposed compensating measures and/or mitigating measures and the implementation plan, and that on behalf of the Responsible Entity that the Responsible Entity believes approval of the TFE Request or Material Change Report is warranted pursuant to the criteria specified in Section 3.1 of this Appendix.

Additional information may be requested by the Regional Entity as necessary or appropriate. At the discretion of the Regional Entity, information may be verified at a subsequent Compliance Audit or Spot Check or other form of monitoring.

Removal of a device from a TFE containing multiple devices of the same category does not require the filing of a Material Change Report. The information can be communicated during the next required submittal associated with the same category.

#### **4.3. [Deleted]**

#### **4.4 Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information Included in Required Information**

**4.4.1.** Upon reasonable advance notice from a Regional Entity or NERC, and subject to Section 4.4.2, the Responsible Entity must provide the Regional Entity or NERC (i) with access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information included in the TFE Request, and (ii) with access to the Covered Asset(s) and the related Facility(ies) for purposes of making a physical review and inspection.

**4.4.2.** If the Responsible Entity is prohibited by law from disclosing any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended), then such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall only be reviewed by a representative or representatives of the Regional Entity or NERC (which may include contractors) who are Eligible Reviewers.

**4.4.3.** The Regional Entity or NERC, as applicable, will work cooperatively with the Responsible Entity to access Protected FOIA Information in a way that does not waive or extinguish the exemption of the Protected FOIA Information from disclosure.

#### **4.5 [Deleted]**

## **5.0 REVIEW AND APPROVAL/DISAPPROVAL OF TFE REQUESTS OR MATERIAL CHANGE REPORTS**

### **5.1 Identification of TFE Requests or Material Change Reports**

**5.1.1.** Upon receipt of a TFE Request or Material Change Report, the Regional Entity (i) will assign a unique identifier to the TFE Request or Material Change Report.

**5.1.2.** The unique identifier assigned to the TFE Request or Material Change Report will be in the form of XXXX-YYY-TFEZZZZZ, where “XXXX” is the year in which the TFE Request is received by the Regional Entity (*e.g.*, “2009”); “YYY” is the acronym for the Regional Entity within whose Region the Covered Asset is located;<sup>4</sup> and “ZZZZZ” is the sequential number of the TFE Requests received by the Regional Entity in that year. In the case of a Material Change Report, “-AZ” will be added to the end of the identifier, where “Z” is the sequential number of the Material Change Report to the TFE.

### **5.2 Review of TFE Request or Material Change Report for Approval or Disapproval**

**5.2.1** The Regional Entity shall review a TFE Request or Material Change Report to determine if it should be approved in accordance with Section 3.1 of this Appendix, or disapproved. As part of its review, the Regional Entity may request access to and review the Required Information, including any Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information that is necessary to support the TFE Request; may conduct one or more physical inspections of the Covered Asset(s) and the related Facility(ies); may request additional information from the Responsible Entity; and may engage in discussions with the Responsible Entity concerning possible revisions to the TFE Request or Material Change Report.

**5.2.2.** The Regional Entity shall complete its review of the TFE Request or Material Change Report and make its determination of whether the TFE Request or Material Change Report is approved or disapproved, and issue a notice (in accordance with Sections 5.2.4 or 5.2.5) stating the TFE Request is approved or disapproved, within 60 days after receipt of the TFE Request. In addition, the Regional Entity may extend the 60-day time period for individual TFE Requests or Material Change Reports by issuing a notice to the Responsible Entity, stating the revised date by which the Regional Entity will issue its notice approving or disapproving the TFE Request or Material Change Report.

**5.2.3.** The Regional Entity may approve or disapprove the TFE Request or Material Change Report in whole or in part, even if the TFE Request or Material Change Report is for two or more Covered Assets subject to the same Applicable Requirement.

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<sup>4</sup> The acronyms to be used are: FRCC (Florida Reliability Coordinating Council); MRO (Midwest Reliability Organization); NPCC (Northeast Power Coordinating Council); RF (ReliabilityFirst Corporation); SERC (SERC Reliability Corporation); SPP (Southwest Power Pool Regional Entity); TRE (Texas Reliability Entity); and WECC (Western Electricity Coordinating Council).

**5.2.4.** If the Regional Entity approves the TFE Request or Material Change Report, the Regional Entity shall issue a notice to the Responsible Entity, stating that the TFE Request or Material Change Report is approved.

**5.2.5.** If the Regional Entity disapproves the TFE Request or Material Change Report, the Regional Entity shall issue a notice to the Responsible Entity stating that the TFE Request or Material Change Report is disapproved and stating the reasons for the disapproval. In its notice disapproving a TFE Request, the Regional Entity may also, but is not required to, state any revisions to the TFE Request the Regional Entity has identified, based on its review of the TFE Request, that if made by the Responsible Entity would result in approval of the TFE Request. Such revisions may include, but are not limited to, changes to the Responsible Entity's proposed (i) compensating measures and/or mitigating measures, (ii) implementation schedules, or (iii) TFE Expiration Date.

**5.2.6.** A notice disapproving a TFE Request or Material Change Report shall state a TFE Termination Date, which shall be no less than sixty-one (61) calendar days and no more than ninety-one (91) calendar days after the date of issuance of the notice, unless the Regional Entity determines there are exceptional circumstances that justify a later TFE Termination Date. If the Regional Entity determines the TFE Termination Date should be more than ninety-one (91) calendar days after the date of issuance of the notice due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice. Following the TFE Termination Date, the Responsible Entity is subject to issuance of a Notice of Alleged Violation by the Regional Entity with respect to the Applicable Requirement that was the subject of the disapproved TFE Request or Material Change Report, unless the Responsible Entity has achieved Strict Compliance with the Applicable Requirement. Provided, that if the TFE Termination Date occurs prior to the Responsible Entity's Compliant Date for the Applicable Requirement, then the Responsible Entity is not subject to issuance of a Notice of Alleged Violation until the Compliant Date. A Notice of Alleged Violation issued with respect to the Applicable Requirement shall be processed in accordance with Sections 5.0, 6.0 and 7.0 of the CMEP.

**5.2.7** If a Regional Entity processes a TFE Request or Material Change Report within the required timeframe and with no exceptional circumstances (as described below), the Regional Entity will retain the associated records and make them available upon request by NERC. The information that the Regional Entity will make available includes information that pertains to the basis on which the Regional Entity approved or disapproved a TFE Request or Material Change Report. If the Regional Entity has disapproved a TFE Request or Material Change Report and determined there were exceptional circumstances justifying a TFE Termination Date more than ninety-one (91) days after the date of issuance of the notice, the Regional Entity shall send a copy of that notice to NERC, to include a description of such exceptional circumstances.

**5.2.8** A Responsible Entity may submit to NERC information that the Responsible Entity believes demonstrates that the approval or disapproval by a Regional Entity of a TFE Request or Material Change Report submitted by the Responsible Entity constitutes an inconsistent application of the criteria specified in Section 3.1 as compared to other determinations of TFE Requests or Material Change Reports made by the same Regional Entity or another Regional

Entity for the same type of Covered Assets. The Responsible Entity may ask that NERC request the Regional Entity to reconsider its approval or disapproval of the TFE Request or Material Change Report. A Responsible Entity's submission to NERC under this Section 5.2.8 shall be in writing and shall set forth (i) the TFE Request or Material Change Report for which the Responsible Entity received a determination that the Responsible Entity believes represents an inconsistent application of the criteria specified in Section 3.1 (using the identifier assigned to the TFE Request or Material Change Report pursuant to Section 5.1.2), (ii) a copy of the Regional Entity's notice of approval or disapproval of the TFE Request or Material Change Report, and (iii) a description of the inconsistency in determinations that the Responsible Entity believes has occurred, including specific reference(s) to any other determinations of TFE Requests or Material Change Reports for the same type of Covered Assets that the Responsible Entity believes constitutes inconsistent application of the criteria specified in Section 3.1. The Responsible Entity's submission shall provide a clear and compelling demonstration that inconsistent applications of the criteria specified in Section 3.1 have occurred in the determinations of two or more TFE Requests or Material Change Reports for the same type of Covered Assets made by the same Regional Entity or two or more Regional Entities. NERC will provide a copy of the Responsible Entity's submission to the Regional Entity that approved or disapproved the TFE Request or Material Change Report that is the subject of the submission. NERC will review the Responsible Entity's submission and the reports requested from the Regional Entity or Regional Entities pursuant to Section 5.2.7 with respect to the TFE Requests or Material Change Reports that are the subject of the Responsible Entity's submission, and may decide, in accordance with Section 5.2.9, to request the Regional Entity to reconsider its determination. NERC will send a written notice to the Responsible Entity stating that NERC has determined to request reconsideration by the Regional Entity or has determined not to request reconsideration by the Regional Entity, as applicable.

**5.2.9** NERC may request the Regional Entity to reconsider the approval or disapproval of a TFE Request or Material Change Report solely on the grounds that the approval or disapproval would result in inconsistent application of the criteria specified in Section 3.1 as compared to determinations made on TFE Requests or Material Change Reports for the same type of Covered Assets by the same Regional Entity or a different Regional Entity. Requests for reconsideration on any other grounds are not allowed. A request for reconsideration shall be submitted in writing to the Regional Entity and shall set forth (i) the TFE Request or Material Change Report that is the subject of the request for reconsideration (using the identifier assigned to the TFE Request or Material Change Report pursuant to Section 5.1.2), (ii) a copy of the Regional Entity's notice of approval or disapproval of the TFE Request or Material Change Report, and (iii) a description of the inconsistency in determinations on which NERC relies as the basis for the request for reconsideration, including specific reference(s) to other determinations of TFE Requests or Material Change Reports for the same type of Covered Asset that NERC believes constitutes inconsistent application of the criteria specified in Section 3.1. The Regional Entity shall consider the request for reconsideration and shall issue a notice to NERC and the affected Responsible Entity(ies) approving, disapproving or rejecting the TFE Request or Material Change Report in accordance with Section 5.2.4, Section 5.2.5, Section 5.2.6 and/or Section 9.2, as applicable, within one hundred twenty (120) days following receipt of the request for reconsideration. A determination on a request for reconsideration approving or disapproving a TFE Request or Material Change Report shall be effective prospectively only, from its TFE Termination Date,

provided, that if a Regional Entity receives a request for reconsideration of the disapproval of a TFE Request or Material Change Report prior to the TFE Termination Date of the notice of disapproval, the Regional Entity shall issue a notice to the affected Responsible Entity pursuant to Section 5.2.6, as applicable, suspending the TFE Termination Date pending determination of the request for reconsideration.

**5.3 No Findings of Violations or Imposition of Penalties for Violations of an Applicable Requirement for the Period a TFE Request or Material Change Report is Being Reviewed**

The Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of Penalties or sanctions for violations, for failure to be in Strict Compliance with an Applicable Requirement that is the subject of a TFE Request or Material Change Report, for the period from:

- (i) the date that is sixty (60) calendar days after submission of the TFE Request or Material Change Report,  
  
to:
- (ii) (A) the date of the Regional Entity's notice that the TFE Request or Material Change Report is approved, or (B) the TFE Termination Date of the Regional Entity's notice that the TFE Request or Material Change Report is disapproved, whichever is applicable.

Provided, that:

- (1) while a TFE Request or Material Change Report is undergoing review, the Regional Entity shall not issue a Notice of Alleged Violation to the Responsible Entity for being noncompliant with the Applicable Requirement that is the subject of the TFE Request or Material Change Report during the period on and after the TFE Request or Material Change Report was submitted;
- (2) if the TFE Request or Material Change Report is approved, the Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of Penalties or sanctions for violations, for failure to be in Strict Compliance with an Applicable Requirement that is the subject of the TFE Request or Material Change Report, during the period from submission of the TFE Request to the date of the Regional Entity's notice that the TFE Request or Material Change Report is approved; and
- (3) if the TFE Request or Material Change Report is disapproved, and is found by the Regional Entity, NERC or FERC to have been fraudulent or submitted not in good faith, the provisions of this Section 5.3 shall not apply, the Responsible Entity shall be subject to imposition of findings of violations and imposition of Penalties or sanctions for violations, for failure to be in Strict Compliance with the Applicable

Requirement that was the subject of the TFE Request or Material Change Report, for the entire period subsequent to the date the TFE Request or Material Change Report was submitted, and the Responsible Entity's fraudulent or not-in-good-faith submission of the TFE Request or Material Change Report shall be an aggravating factor in determining the amounts of Penalties or sanctions to be imposed on the Responsible Entity for such violations.

## **6.0 IMPLEMENTATION AND REPORTING BY THE RESPONSIBLE ENTITY PURSUANT TO AN APPROVED TFE OR MATERIAL CHANGE REPORT**

**6.1.** The Responsible Entity will be required to implement compensating measures and/or mitigating measures as described, and in accordance with the time schedule(s) set forth, in the approved TFE.

**6.2.** In the event the TFE has been approved with a TFE Expiration Date, the Responsible Entity will be required to implement steps, or conduct research and analysis, towards achieving Strict Compliance with the Applicable Requirements and eliminating the TFE, as described, and in accordance with the time schedule set forth, in the approved TFE.

**6.3.** [Deleted]

**6.4.** [Deleted]

**6.5.** If there is a Material Change in the facts underlying approval of the TFE, the Responsible Entity shall submit a Material Change Report to the Regional Entity, within sixty (60) calendar days of identification or discovery of the Material Change, supporting the continuing need and justification for the approved TFE or verifying that the Responsible Entity has achieved Strict Compliance with the Applicable Requirement pursuant to Section 4.0. The Regional Entity may extend the period for submittal of the Material Change Report upon request and with good cause shown.

**6.6.** [Deleted]

**6.7.** [Deleted]

**6.8.** If a Responsible Entity fails to implement or maintain a compensating measure or mitigating measure or fails to conduct research or analysis towards achieving Strict Compliance, in accordance with the approved TFE; or fails to submit one or more reports by the required submission date, the Responsible Entity (i) is required to file a Self-Report in accordance with Section 3.5 of the CMEP, and (ii) will be subject to issuance of a Notice of Alleged Violation for noncompliance with the Applicable Requirement that is the subject of the approved TFE. Any such Notice of Alleged Violation shall be processed in accordance with Sections 5.0, 6.0 and 7.0 of the CMEP.

## **7.0 AMENDMENT OF A PENDING TFE REQUEST**

A Responsible Entity may amend a pending TFE Request that is under review by a Regional Entity, for the purpose of providing additional or revised Required Information during the 60-day review period. Submission of an amendment to a pending TFE Request may, in the Regional Entity's discretion, extend the time period for the Regional Entity's review of the TFE Request but does not require the restart of the approval process.

## **8.0 COMPLIANCE AUDIT REQUIREMENTS RELATING TO APPROVED TFE**

**8.1.** Following approval of a Responsible Entity's TFE Request, subsequent Compliance Audits of the Responsible Entity may include audit of (i) the Responsible Entity's implementation and maintenance of the compensating measures and/or mitigating measures specified in the approved TFE, in accordance with the time schedule set forth in the approved TFE, and (ii) the Responsible Entity's implementation of steps and conduct of research and analyses towards achieving Strict Compliance with the Applicable Requirement, in accordance with the time schedule set forth in the approved TFE.

## **9.0 TERMINATION OF AN APPROVED TFE**

**9.1.** An approved TFE shall remain in effect unless it terminates on the TFE Expiration Date, is terminated at an earlier date pursuant to this Section 9.0, the Responsible Entity achieves Strict Compliance with the Applicable Requirement or there is a material misrepresentation by the Responsible Entity as to the facts relied upon by the Regional Entity in approving the TFE.

**9.2.** The Responsible Entity may terminate an approved TFE by submitting a notice to the Regional Entity stating that the Responsible Entity is terminating the TFE and providing the TFE Termination Date.

**9.3.** A Regional Entity or NERC may notify a Responsible Entity of the intent to terminate early or revise an approved TFE if there is a basis for such action based on compliance monitoring results (e.g., audit findings). After the Responsible Entity has received notice of that intended action, (including by advancement of the TFE Expiration Date), it will have an opportunity to submit a response to the Regional Entity or NERC. If it is determined that the approved TFE should be terminated or revised, the Regional Entity shall issue a notice of termination to the Responsible Entity stating the TFE Termination Date. The TFE Termination Date shall be no less than sixty-one (61) calendar days and no more than ninety-one (91) calendar days after the date of issuance of the notice of termination, unless the Regional Entity determines there are exceptional circumstances that justify a later TFE Termination Date. If the Regional Entity determines the TFE Termination Date should be more than ninety-one (91) calendar days after the issuance of the notice of termination due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice of termination (with a copy of the notice sent to NERC if the notice is issued by the Regional Entity).

**9.4.** The Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of Penalties or sanctions for violations, for failure to be in Strict

Compliance with an Applicable Requirement that is the subject of a TFE until the TFE Termination Date provided in the notice of termination.

## **10.0 HEARINGS AND APPEALS PROCESS FOR RESPONSIBLE ENTITY**

The Responsible Entity may raise issues relating to the disapproval of its TFE Request or the termination of the approved TFE in the hearing concerning the Notice of Alleged Violation, proposed Penalty or sanction, or Mitigation Plan components.

## **11.0 CONSISTENCY IN APPROVAL AND DISAPPROVAL OF TFE REQUESTS AND MATERIAL CHANGE REPORTS**

**11.1.** NERC and the Regional Entities will engage in the activities specified in this Section 11.0 for the purpose of assuring consistency in the review, approval and disapproval of TFE Requests and Material Change Reports (i) among the Regional Entities, (ii) among different types of Covered Assets that are subject to the same Applicable Requirement, (iii) with respect to the application of the criteria specified in Section 3.1 for approval of TFE Requests or Material Change Reports, including the comparison of safety risks and costs of Strict Compliance to reliability benefits of Strict Compliance, and (iv) with respect to the types of mitigating measures and compensating measures that are determined to be appropriate to support approval of TFE Requests or Material Change Reports. In appropriate cases, NERC will submit a request for reconsideration to a Regional Entity in accordance with Section 5.2.9.

**11.2.** The activities in which NERC and the Regional Entities will engage for the purposes stated in Section 11.1 will include, but not be limited to, the following activities:

1. [Deleted]
2. NERC will maintain, as Confidential Information, based on reports submitted by Regional Entities, a catalogue of the types of Covered Assets for which TFE Requests or Material Change Reports from the various Applicable Requirements have been approved and disapproved. The catalogue will be accessible to the Regional Entities for their use in connection with their substantive reviews of TFE Requests or Material Change Reports.
3. NERC and the Regional Entities will form a committee comprised of NERC and Regional Entity representatives involved in the review of TFE Requests or Material Change Reports and other Critical Infrastructure program activities, which shall be charged to review approved and disapproved TFE Requests or Material Change Reports for consistency and to issue such guidance to the Regional Entities, as Confidential Information, as the committee deems appropriate to achieve greater consistency in approval and disapproval of TFE Requests or Material Change Reports in the respects listed in Section 11.1. The committee shall include persons with appropriate subject matter expertise for the responsibilities and activities of the committee.



4. NERC will submit to the FERC and to other Applicable Governmental Entities an annual informational report containing the following information concerning the manner in which Regional Entities have made determinations to approve or disapprove TFE Requests or Material Change Reports based on the criteria of Section 3.1:
  - (i) whether any issues were identified during the period covered by the informational report with respect to the consistency of the determinations made based on the criteria in Section 3.1, either within a Regional Entity or among Regional Entities;
  - (ii) a description of any such identified consistency issues;
  - (iii) how each consistency issue was resolved;
  - (iv) the numbers of TFE Requests or Material Change Reports for which reconsideration was requested pursuant to Section 5.2.9 based on purported inconsistencies in determinations applying the criteria in Section 3.1 and the numbers of such requests which resulted in TFE Requests or Material Change Reports being approved or disapproved; and
  - (v) whether NERC has developed or is in a position to develop a uniform framework for Regional Entities to use to appraise the reliability benefits of Strict Compliance when making determinations based on the criteria in Section 3.1(iv) and (vi).

Annual informational reports shall cover the period from July 1 through June 30 and shall be filed within 90 days following the end of the period covered by the report.

If NERC determines it is necessary to include any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information in an informational report in order to satisfy the information requirements specified above, such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall be contained in a separate non-public, confidential appendix to the informational report. Prior to submitting to FERC or another Applicable Governmental Authority a non-public, confidential appendix that provides specific Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information of a particular Responsible Entity and identifies the Responsible Entity or one of its Facilities by name, NERC shall provide at least twenty-one (21) days advance notice to the Responsible Entity. The non-public, confidential appendix shall be submitted to FERC and other Applicable Governmental Authorities in accordance with their procedures for receiving confidential, proprietary and other protected information.

## **12.0 CONFIDENTIALITY OF TFE REQUESTS, MATERIAL CHANGE REPORTS AND RELATED INFORMATION**

Except as expressly stated in this Section 12.0, the submission, review, and approval/disapproval of TFE Requests or Material Change Reports, and the implementation and termination of approved TFEs, shall be maintained as confidential. The following Documents are Confidential Information and shall be treated as such in accordance with Section 1500 of the *NERC Rules of Procedure*:

- (i) All TFE Requests and amendments or Material Change Reports submitted, filed or made available by the Responsible Entity;
- (ii) All notices issued by a Regional Entity or NERC pursuant to this Appendix;
- (iii) All requests for Documents or information made by a Regional Entity or NERC pursuant to this Appendix;
- (iv) All submissions of Documents and information by a Responsible Entity to a Regional Entity or NERC pursuant to this Appendix;
- (v) All post-approval reports submitted by a Responsible Entity pursuant to this Appendix;
- (vi) All correspondence, notes, drawings, drafts, work papers, electronic communications, reports and other Documents generated by a Regional Entity or NERC in connection with a TFE Request or Material Change Report, including (without limiting the scope of this provision) in connection with reviewing a TFE Request or Material Change Report and supporting Documents and information submitted, filed or made available by the Responsible Entity, conducting a physical inspection of the Covered Asset(s) or the related Facility(ies), reviewing and analyzing post-approval reports submitted by a Responsible Entity, or conducting compliance monitoring processes pursuant to the CMEP with respect to a TFE Request or Material Change Report or approved TFE.
- (vii) All guidance issued to Regional Entities pursuant to Section 11.2 by NERC or by the committee described in Section 11.2(3), and all minutes of meetings of the committee and discussions between or among its members.
- (viii) All submissions by Responsible Entities to NERC pursuant to Section 5.2.8.
- (ix) All requests for reconsideration pursuant to Section 5.2.9.
- (x) Any confidential appendix to an informational report prepared and submitted pursuant to Section 11.2(4) or to an Annual Report prepared and submitted pursuant to Section 13.0.

## **13.0 ANNUAL REPORT TO FERC AND OTHER APPLICABLE GOVERNMENTAL AUTHORITIES**

### **13.1. Contents of Annual Report**

NERC shall submit an Annual Report to FERC that provides a Wide-Area analysis or analyses, which NERC shall prepare in consultation with the Regional Entities, regarding the use of TFEs and the impact on the reliability of the Bulk Electric System, as required by Paragraphs 220 and 221 of *Order No. 706*, which state:

. . . [W]e direct the ERO to submit an annual report to the Commission that provides a wide-area analysis regarding use of the technical feasibility exception and the effect on Bulk-Power System reliability. The annual report must address, at a minimum, the frequency of the use of such provisions, the circumstances or justifications that prompt their use, the interim mitigation measures used to address vulnerabilities, and efforts to eliminate future reliance on the exception. . . [T]he report should contain aggregated data with sufficient detail for the Commission to understand the frequency with which specific provisions are being invoked as well as high level data regarding mitigation and remediation plans over time and by region . . . .

Copies of the Annual Report shall be filed with other Applicable Governmental Authorities. The Annual Report shall contain, at a minimum, the following information:

- (i) The frequency of use of the TFE Request process, disaggregated by Regional Entity and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, including (A) the numbers of TFE Requests that have been submitted and approved/disapproved during the preceding year and cumulatively since the effective date of this Appendix, (B) the numbers of unique Covered Assets for which TFEs have been approved, (C) the numbers of approved TFEs that are still in effect as of on or about the date of the Annual Report; (D) the numbers of approved TFEs that reached their TFE Expiration Dates or were terminated during the preceding year; and (E) the numbers of approved TFEs that are scheduled to reach their TFE Expiration Dates during the ensuing year;
- (ii) Categorization of the submitted and approved TFE Requests to date by broad categories such as the general nature of the TFE Request, the Applicable Requirements covered by submitted and approved TFE Requests, and the types of Covered Assets that are the subject of submitted and approved TFE Requests;
- (iii) Categorization of the circumstances or justifications on which the approved TFEs to date were submitted and approved, by broad categories such as the need to avoid replacing existing equipment with significant remaining useful lives, unavailability of suitable equipment to achieve Strict Compliance in a timely manner, or conflicts with other statutes and regulations applicable to the Responsible Entity;

- (iv) Categorization of the compensating measures and mitigating measures implemented and maintained by Responsible Entities pursuant to approved TFEs, by broad categories of compensating measures and mitigating measures and by types of Covered Assets;
- (v) For each TFE Request that was disapproved, and for each TFE that was terminated, but for which, due to exceptional circumstances as determined by the Regional Entity, the TFE Termination Date was later than the latest date specified in Section 5.2.6, or 9.3, as applicable, a statement of the number of days the Responsible Entity was not subject to imposition of findings of violations of the Applicable Requirement or imposition of Penalties or sanctions pursuant to Section 5.3.
- (vi) A discussion, on an aggregated basis, of Compliance Audit results and findings concerning the implementation and maintenance of compensating measures and mitigating measures, and the implementation of steps and the conduct of research and analyses to achieve Strict Compliance with the Applicable Requirements, by Responsible Entities in accordance with approved TFEs;
- (vii) Assessments, by Regional Entity (and for more discrete areas within a Regional Entity, if appropriate) and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, of the Wide-Area impacts on the reliability of the Bulk Electric System of approved TFEs in the aggregate, including the compensating measures and mitigating measures that have been implemented;
- (viii) Discussion of efforts to eliminate future reliance on TFEs;
- (ix) Data and information regarding Material Change Reports, including the number of Material Change Reports filed annually and information regarding the types of circumstances or events that led to Material Changes, as well as any additional information NERC believes would be useful; and
- (x) Additional information about TFEs and their TFE Expiration Dates, including the number of TFEs by expiration year and CIP Standard requirement, the percentage of currently approved TFEs without TFE Expiration Dates, and the number of new TFEs approved without expiration dates annually.

**13.2. [Deleted]**

**13.3. [Deleted]**

**13.4. Annual Report to be a Public Document; Confidential Appendix**

It is the intent of this Appendix that the Annual Report be a public document. Therefore, NERC shall prepare the annual report in such a manner that it does not include or disclose any Confidential Information, Classified National Security Information, NRC Safeguards Information

or Protected FOIA Information. However, if NERC determines it is necessary to include any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information in an Annual Report in order to satisfy the information requirements specified in this Appendix or required by FERC or other Applicable Governmental Authorities, such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall be contained in a separate non-public, confidential appendix to the Annual Report. Prior to submitting to FERC or another Applicable Governmental Authority a non-public, confidential appendix that provides specific Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information of a particular Responsible Entity and identifies the Responsible Entity or one of its Facilities by name, NERC shall provide at least twenty-one (21) days advance notice to the Responsible Entity. The non-public, confidential appendix shall be submitted to FERC and other Applicable Governmental Authorities in accordance with their procedures for receiving confidential, proprietary and other protected information.

### **13.5. Responsible Entities Must Cooperate in Preparation of Annual Report**

As specified in Paragraph 220, note 74 of Order No. 706, Responsible Entities must cooperate with NERC and Regional Entities in providing information deemed necessary for NERC to fulfill its reporting obligations to FERC.

## **Appendix 4E**

# **Compliance and Certification Committee Hearing Procedures, Hearing Procedures for Use in Appeals, and Mediation Procedures**

**Effective: October 4, 2013**

# Table of Contents

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	<b>PAGE</b>
NERC Compliance and Certification Committee Hearing Procedures	1
NERC Compliance and Certification Committee Hearing Procedures for Use in Appeals of Certification Matters	39
NERC Compliance and Certification Committee Mediation Procedures	61

The logo for NERC (North American Electric Reliability Corporation) features the letters "NERC" in a bold, black, sans-serif font. A thick blue horizontal bar is positioned directly beneath the letters.

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

# NERC Compliance and Certification Committee Hearing Procedures

CCC Monitoring Program — CCCPP-004-1

A faint, light blue map of North America is visible in the background of the lower half of the page. The map shows the outlines of the United States, Canada, and Mexico.

to ensure  
the reliability of the  
bulk power system

Version 1.0

116-390 Village Blvd., Princeton, NJ 08540  
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[www.nerc.com](http://www.nerc.com)



<b>NERC Compliance and Certification Committee</b>		<b>CCCPP-004-1</b>
<b>Title:</b> Hearing Procedures		
<b>Version: 1.0</b>	<b>Revision Date: n/a</b>	<b>Effective Date: June 10, 2010</b>

### **Summary**

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings in the United States as described in the North America Electric Reliability Corporation (“NERC”) Rules of Procedure (“ROP”). Specifically, as directed by the NERC Board of Trustees, CCC serves as the hearing body for any contest regarding findings of or Penalties or sanctions for violation(s) of Reliability Standard(s) where NERC is directly monitoring the Registered Entity for compliance with those Reliability Standards (Registered Entity by agreement with an Regional Entity or absent a delegation agreement; the Regional Entity itself where approved Reliability Standards are applicable to the Regional Entity) as described in the ROP Section 409.

### **Revision History**

<b>Date</b>	<b>Version Number</b>	<b>Comments</b>
03/03/09	1.0	Approved by CCC
05/06/09	1.0	Approved by the Board of Trustees

# Table of Contents

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<b>1.</b>	<b>Compliance and Certification Committee Hearing Procedures.....</b>	<b>1</b>
<b>1.1</b>	<b>Applicability, Definitions and Interpretation.....</b>	<b>1</b>
<b>1.2</b>	<b>General Provisions including Filing, Service, Transcription and Participation.....</b>	<b>4</b>
<b>1.3</b>	<b>Initiation of the Hearing Process .....</b>	<b>9</b>
<b>1.4</b>	<b>General Hearing Procedure .....</b>	<b>12</b>
<b>1.5</b>	<b>Prehearing Procedure.....</b>	<b>18</b>
<b>1.6</b>	<b>Evidentiary Hearing Procedure.....</b>	<b>26</b>
<b>1.7</b>	<b>Post- Evidentiary Hearing Procedure .....</b>	<b>30</b>
<b>1.8</b>	<b>Settlement .....</b>	<b>33</b>
<b>1.9</b>	<b>Remedial Action Directives.....</b>	<b>34</b>

# 1. Compliance and Certification Committee Hearing Procedures

## 1.1 Applicability, Definitions and Interpretation

### 1.1.1 Procedure Governed

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in the North America Electric Reliability Corporation (“NERC”) Rules of Procedure (“ROP”). Specifically, as directed by the NERC Board of Trustees, CCC serves as the hearing body for any contest regarding findings of or Penalties or sanctions for violation(s) of Reliability Standard(s) where NERC is directly monitoring the Registered Entity for compliance with those Reliability Standards (Registered Entity by agreement with an Regional Entity or absent a delegation agreement; the Regional Entity itself where approved Reliability Standards are applicable to the Regional Entity) as described in the ROP Section 409.

CCC shall determine (i) whether such Registered Entities as described above or whether Regional Entities have violated Reliability Standards and if so, the appropriate Mitigation Plans as well as any remedial actions, Penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable Penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), or (ii) a challenge by a Regional Entity regarding a Regional Entity compliance program audit finding by NERC (in either case, such Respondent or Regional Entity, hereafter a “Respondent”). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Panel established by the CCC in accordance with Section 8.3 of the CCC Charter. The composition of the Hearing Panel, 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 Panel on any matter brought before it for decision.

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 Mitigation Plan, or requiring compliance with a Remedial Action Directive.

### 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 Panel, for good cause shown, either upon the Hearing Officer’s or the Hearing Panel’s own motion or upon the motion of any Participant.

### 1.1.3 Standards for Discretion

The CCC’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 CCC 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 NERC's conflict of interest policy.
- e) Impartiality — Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Respondents should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) Expedition — Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

#### **1.1.4 Interpretation**

- a) These Hearing Procedures shall be interpreted in such a manner as will aid in effectuating the Standards for Discretion set forth in Paragraph 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.
- b) Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.
- c) To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

#### **1.1.5 Definitions**

Capitalized terms used in these Hearing Procedures shall have the definitions set forth in Appendix 2 of the Rules of Procedure. For convenience of reference, definitions of the following terms that are used in these Hearing Procedures are also set forth below:

“Bulk Power System,” for the purposes of these Hearing Procedures, means Bulk Electric System.

“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 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 who is responsible for the management and supervision of the 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.

“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 of the United States, subject to Commission review.

“FERC” means the United States Federal Energy Regulatory Commission.

“Hearing Officer” means (1) a CCC member or (2) an individual employed or contracted by NERC, as designated by the CCC to preside over hearings conducted pursuant to these Hearing Procedures; 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 Paragraph 1.1.1 above. Specifically, the CCC shall not have a standing Hearing Panel. When a hearing is to be conducted, the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members to serve on the Hearing Panel shall be selected by vote of a valid quorum of the CCC. Voting members of the CCC at arm’s length from parties to the hearing may be nominated or volunteer to stand for selection to the Hearing Panel. One or more alternates may also be selected if the CCC deems appropriate for the circumstances. A member may serve on more than one Hearing Panel concurrently. A Hearing Panel is disbanded upon conclusion of the hearing proceedings for which it was formed.

“Participant” means a Respondent and any other Person who is allowed or required by FERC to participate as an intervenor in a proceeding conducted pursuant to these Hearing Procedures, and as used herein shall include the members of the Compliance Staff that participate in a proceeding.

“Penalty” as used herein includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the 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 Respondent's violation and take into consideration any timely efforts made by the 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.

"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.

"Reliability Standards" 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.

"Respondent" means the Registered Entity or Regional 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 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 NERC'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 Panel.

## **1.2 General Provisions including Filing, Service, Transcription and Participation**

### **1.2.1 Contents of Filings**

All filings made with the CCC must contain:

- a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;
- b) A heading that describes the filing and the Participant on whose behalf the filing is made;

- c) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;
- d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record of the hearing, if available, or other documents; and
- e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

### **1.2.2 Form of Filings**

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### **1.2.3 Submission of Documents**

#### **a) Where to File**

Filings shall be made with the NERC Director of Compliance located at NERC's principal office. The office will be open from 8 a.m. to 5 p.m., Eastern, each day except Saturday, Sunday, legal holidays and any other day declared by NERC.

#### **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 Panel. Filings will be considered made when they are date stamped received by the NERC Director of Compliance. To be timely, filings must be received no later than 5 p.m., Eastern, 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 NERC Director of Compliance.

**d) Number of Copies to File**

One original and seven exact copies of any document shall be filed. The NERC Director of Compliance will provide the Hearing Officer, if any, and each member of the Hearing Panel 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 Panel. 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 NERC Director of Compliance 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, NERC Director of Compliance and the Respondent's designated agent for service as registered on the NERC Compliance Registry 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 NERC Director of Compliance.



**b) By Participants**

Any Participant filing a document in a proceeding must serve a copy of the document on each individual whose name is on the service list for the proceeding. Unless otherwise provided, service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

**c) By the NERC Director of Compliance**

The NERC Director of Compliance shall serve all issuances of the Hearing Officer and Hearing Panel upon the members of the Hearing Panel 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 Hearing Panel shall ensure that the NERC Director of Compliance has a copy of the record of a proceeding at the time it issues a final order.

**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) calendar 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 NERC office 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 NERC office 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 Panel 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 Panel 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 Panel upon motion made at any time on such terms and conditions as are deemed to be just and reasonable.

### **1.2.8 Transcripts**

A full and complete record of all hearings, including any oral argument, shall be transcribed verbatim by a certified court reporter, except that the Hearing Officer or the Hearing Panel may allow off-the-record discussion of any matter provided the Hearing Officer or the Hearing Panel states the ruling on any such matter, and the Participants state their positions or agreement in relation thereto, on the record. Unless otherwise prescribed by the Hearing Officer or the Hearing Panel, a Participant may file and serve suggested corrections to any portion of the transcript within thirty-five (35) calendar days from the date on which the relevant portion of the transcript was taken, and any responses shall be filed within ten (10) days after service of the suggested corrections. The Hearing Officer or the Hearing Panel shall determine what changes, if any, shall be made, and shall only allow changes that conform the transcript to the truth and ensure the accuracy of the record.

NERC will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for the Hearing Officer and the Hearing Panel. 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 Panel 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 Panel. 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 NERC's principal office unless the Hearing Officer or the Hearing Panel 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 or the Hearing Panel, except that witnesses shall personally appear at the evidentiary hearing if required by Paragraph 1.6.6. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

### **1.2.12 Interventions Are Not Permitted**

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC or another Applicable Governmental Authority (in the case of non-U.S.-related proceedings), no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

### **1.2.13 Proceedings Closed to the Public**

No hearing, oral argument or meeting of the Hearing Panel shall be open to the public, and no notice, ruling, order or any other issuance of the Hearing Officer or Hearing Panel, 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) determines that public release is appropriate. Only the members of the Hearing Panel, 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 NERC Director of Compliance shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a Notice of Alleged Violation or the findings of a Regional Entity compliance program audit. Unless NERC provides a different docketing system that will be used, 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 “NERC”, 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 Hold Harmless**

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the NERC and the CCC, including without limitation their Members, Board of Trustees, Compliance Committee, any other committees or subcommittees, Staff, contracted employees, Hearing Panel 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 Respondent’s Option to Request a Hearing**

Except when contesting a Remedial Action Directive pursuant to Paragraph 1.9 of these Hearing Procedures, a Respondent may file a statement with the NERC Director of Compliance requesting a hearing if either:

- a) The Respondent files (i) a response to a Notice of Alleged Violation that contests either the Alleged Violation, the proposed Penalty, or both, or (ii) a response that challenges a Regional Entity compliance program audit finding; or
- b) The Compliance Staff submits to the Respondent a statement rejecting the Respondent’s proposed revised Mitigation Plan submitted after Compliance Staff rejected the Respondent’s initial proposed Mitigation Plan.

A Respondent must file its hearing request within forty (40) calendar days after (i) the Respondent files its response to the Notice of Alleged Violation or to the Regional Entity compliance program audit finding; or (ii) the Compliance Staff submits to the Respondent its statement identifying a disagreement with the Respondent’s proposed Mitigation Plan, whichever is applicable. If the Respondent does not file a hearing request within the time period set forth in this Paragraph, then the Respondent will be deemed to have agreed and waived any objection to the proposed Penalty, the Alleged Violation, the Regional Entity compliance

program audit finding or the Compliance Staff's rejection of the revised Mitigation Plan, whichever is applicable.

A Notice of Alleged Violation issued to a Respondent, a Staff statement setting forth its rejection of a Respondent's proposed revised Mitigation Plan, or a report of the findings from a Regional Entity compliance program audit shall clearly state that the Respondent has the option to contest the Alleged Violation or proposed Penalty, or both, the Regional Entity compliance program audit finding, or the Compliance Staff's rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Paragraphs 1.4 to 1.7. If the Respondent (or any Respondent if there are more than one Respondent) 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 Paragraphs 1.4 to 1.7. If the Respondent (or all Respondents if there are more than one Respondent) requests the full hearing procedure, the full hearing procedure shall apply. If the Respondent requests the shortened hearing procedure, Compliance Staff and any other Participant shall submit a filing within five (5) calendar days of the Respondent'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 Respondent or Respondents 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.

A hearing request shall include:

- a) A concise statement of the error or errors contained in the decision being appealed;
- b) A clear statement of the relief being sought;
- c) Argument in sufficient detail to justify such relief; and
- d) Attachments of the full text of the decision being appealed and whichever of the following are applicable:
  - 1) The Respondent's Self-Reporting of a violation;
  - 2) The Notice of Alleged Violation and the Respondent's response thereto;
  - 3) The report of the Regional Entity compliance program audit and the Respondent's response thereto; and/or
  - 4) The Respondent's proposed revised Mitigation Plan and the Compliance Staff's statement rejecting the proposed revised Mitigation Plan.

### **1.3.2 Shortened Hearing Procedure**

The shortened hearing procedure shall be as set forth in this Paragraph. The rules applicable to the full hearing procedure shall apply to the shortened hearing procedure unless the context of such a rule is inconsistent with the procedure set forth in this Paragraph or otherwise renders it inapplicable to the shortened hearing procedure. The rules concerning ex parte communications in Paragraph 1.4.7 are hereby expressly made applicable to the shortened hearing procedure under this Paragraph.

The Hearing Panel may utilize a Hearing Officer to preside over the shortened hearing procedure in accordance with Paragraph 1.4.2. But, no evidentiary hearing will be held in the shortened hearing procedure and the Participants will not present witness testimony or file briefs, except that briefs on exceptions and briefs in reply to exceptions may be allowed pursuant to Subparagraph (g). Instead, the following events shall take place within the following periods:

- a) The prehearing conference shall be held within seven (7) calendar days after the date on which the notice of hearing is issued. In addition to any other matters set forth in Paragraph 1.5.2 that may apply, the prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).
- b) Within five (5) calendar days after the date on which the notice of hearing is issued, Staff shall make documents available to the Respondent for inspection and copying pursuant to Paragraph 1.5.7.
- c) Within twenty-one (21) calendar days after the prehearing conference, the Staff shall file:
  - 1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
  - 2) all Documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- d) Within fourteen (14) calendar days of Staff's initial comment filing pursuant to Subparagraph (c), the Respondent shall file:
  - 1) responsive comments stating the Respondent'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 Respondent 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) calendar days after the Respondent's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Respondent'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 Respondent 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 Respondent filing also shall be verified.
- f) The Hearing Officer shall issue an initial opinion within twenty-one (21) calendar days after the Staff's reply comments filing or any additional filing by the Respondent pursuant to Subparagraph (e).

- g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) calendar days after the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "brief on exceptions" in accordance with Paragraph 1.7.5 and within seven (7) calendar days thereafter, a reply brief designated "Brief in Reply to Exceptions."
- h) The Hearing Panel shall strive, but is not required, to issue a final order within ninety (90) calendar days of the notice of hearing.

The Hearing Officer or Hearing Panel may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Panel to issue the final order within ninety (90) calendar days of the notice of hearing.

## **1.4 General Hearing Procedure**

### **1.4.1 Notice of Hearing**

Within seven (7) calendar days of a Respondent requesting a hearing pursuant to Paragraph 1.3, the NERC Director of Compliance 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) calendar days after the notice of hearing is issued.

### **1.4.2 Hearing Officer**

The CCC 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 Panel as set forth in Paragraph 1.4.3. Members of the Hearing Panel may attend any aspect of the hearing.

The Hearing Panel may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing from the prehearing conference through the issuance of the initial opinion and any administrative hearing functions thereafter, and the responsibility for submission of the matter to the Hearing Panel for final decision through the presentation to the Hearing Panel 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:

- a) To administer oaths and affirmations;
- b) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- c) 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;
- d) 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;

- e) To supervise and issue orders concerning discovery;
- f) To conduct prehearing conferences, status hearings and evidentiary hearings;
- g) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- h) To rule on and receive evidence;
- i) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- j) To issue protective orders pursuant to Paragraph 1.5.10;
- k) To issue initial opinions; and
- l) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

If the Hearing Panel uses a Hearing Officer to preside over a hearing, the Hearing Panel shall disclose the identity, employment history and professional affiliations of the Hearing Officer within two (2) calendar days of the Hearing Officer's assignment to the proceeding, and Participants to the hearing may raise objections to the Hearing Officer's participation in accordance with Paragraph 1.4.5.

### **1.4.3 Hearing Panel**

The Hearing Panel is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:

- a) The Hearing Panel 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 Panel shall not receive Documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such Documents are placed into the record pursuant to Paragraph 1.6.7.
- b) The Hearing Panel or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or evidentiary hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- c) The Hearing Panel 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 Panel 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.
- d) To the extent that the Hearing Panel 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 Paragraph 1.4.4, reverse or modify the

issuance or ruling in whole or in part, or take any other action as may be appropriate.

- e) The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the Hearing Panel 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 Participant shall be allowed to seek interlocutory review by the Hearing Panel 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. Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the Hearing Panel, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) calendar 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 affidavit if based on facts that do not appear of record. Responses to petitions for interlocutory review shall be filed within seven (7) calendar days after service of the petition. No replies to responses are allowed.

The Hearing Officer shall file a report to the Hearing Panel within fourteen (14) calendar 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 Panel.

On review of a Hearing Officer's ruling, the Hearing Panel 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 Panel 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. Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Paragraph 1.7.8) of the Hearing Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (which number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the Hearing Panel'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 Panel based on a finding of exceptional circumstances.

A non-Participant that has been ordered by the Hearing Officer pursuant to 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 Panel 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 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 Hearing Officer, Technical Advisor or member of the Hearing Panel shall recuse himself or herself from a proceeding if participation would violate the NERC's applicable conflict of interest policy.

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the Hearing Panel from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by Paragraph 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) calendar days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

The Hearing Officer shall issue a proposed ruling for the Hearing Panel's consideration upon the filing of a motion for disqualification unless the Hearing Officer is the subject of the motion. The Hearing Panel, without the participation of any member who is the subject of the motion, shall issue a final ruling on the motion. If the Hearing Officer is recused or disqualified, the Hearing Panel will appoint a replacement Hearing Officer. To ensure fairness to the Participants and expedite completion of the proceeding when a replacement Hearing Officer is appointed after a hearing has commenced, the replacement Hearing Officer may recall any witness or may certify familiarity with any part or all of the record.

If a quorum (as defined in Paragraph 1.7.8) of the Hearing Panel does not remain after any recusals and rulings on motions for disqualification, then the CCC shall appoint a new member(s) to the Hearing Panel to create a quorum, which new member(s) shall serve on the Hearing Panel through the conclusion of the proceeding but not thereafter. The CCC shall only appoint the number of new members as are necessary to create a quorum. Any new member of the Hearing Panel shall be subject to the provisions applicable herein to all Hearing Panel members.

#### **1.4.6 Technical Advisor**

The Hearing Officer and/or the Hearing Panel 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, initial determination of Alleged Violation or Penalty, Regional Entity compliance program audit, or assessment of a Respondent's proposed Mitigation Plan that resulted in the proceeding in which technical advice would be rendered, and shall not be a member of Staff participating in the proceeding on which such technical advice would be rendered.

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

#### **1.4.7 No Ex Parte Communications**

- a) Once a Respondent requests a hearing pursuant to Paragraph 1.3:
  - 1) neither the Hearing Panel, 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 Panel, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
    - A) in writing if the writing is simultaneously provided to all Participants; or
    - B) orally if a representative for every Participant is present in person or by telephone;
    - C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- b) The proscription in Subparagraph (a)(1) does not prohibit members of the Compliance Staff from communicating with the Respondent, 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.
- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the Hearing Panel, the Hearing Officer and any Technical Advisor.
- d) Any member of the Hearing Panel, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) calendar 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**

Participants shall file written appearances within seven (7) calendar days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

A Participant's written appearance shall state, with respect to each individual that the Participant identifies for service, the individual's name, address, telephone number, and facsimile number and email address, if available, where service shall be made.

A Participant may withdraw any individual from the Participant's representation or otherwise change the identity of individuals authorized to represent the Participant in a proceeding by filing a notice of a change in service list.

Any attorney appearing on behalf of a Participant shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia or of another Applicable Governmental Authority (in the case of non-U.S.-related proceedings).

Individuals representing Participants in any hearing also shall enter their appearances at the beginning of the hearing by stating their names, addresses, telephone numbers and email addresses orally on the record.

### **1.4.9 Failure to Appear or Exercise Diligence**

The failure of any Participant to appear during any hearing without good cause and without notification may be grounds for dismissal or deciding against the interests of such Participant.

### **1.4.10 Consolidation of Proceedings**

In the event that more than one Respondent receives a Notice of Alleged Violation for the same event or transaction, and each Respondent selects the full hearing procedure described in Paragraphs 1.4 to 1.7, the Hearing Panel on its own motion may exercise its discretion to examine the actions of all Respondents in a single proceeding as long as an initial opinion has not been rendered by the Hearing Officer pursuant to Paragraph 1.7.4 in any proceeding to be consolidated.

A Participant may file a motion pursuant to Paragraph 1.5.5 to consolidate into a single proceeding allegations of violations of different Reliability Standards against a single Respondent, and related contests of Penalties or Mitigation Plans, arising out of the same event or transaction. Such consolidation may be allowed in the discretion of the Hearing Officer or Hearing Panel, as applicable.

## **1.5 Prehearing Procedure**

### **1.5.1 [Intentionally left blank.]**

### **1.5.2 Prehearing Conference**

The purpose of the prehearing conference shall be to:

- a) Preliminarily identify the issues;
- b) Discuss a schedule for any discovery to be conducted and address any discovery issues that are raised at that time;
- c) Explore the possibility of obtaining admissions of fact and of the genuineness of documents that would avoid unnecessary proof;
- d) Develop a schedule for the preparation and submission of evidence and witness testimony in advance of the evidentiary hearing;
- e) Schedule a date(s) for the evidentiary hearing; and
- f) Address such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

### **1.5.3 Summary Disposition**

A Hearing Officer, on the Hearing Officer's own motion or on the motion of a Participant, may issue an initial opinion granting, in whole or in part, summary disposition if it appears that there are no issues of material fact. If the Hearing Officer is considering summary disposition in the absence of a Participant motion, the Hearing Officer shall request the Participants to identify in writing any issues of material fact and to comment on the proposed disposition. Factual information in the Participants' comments shall be supported by affidavit. Following review of the Participants' comments, if it still appears to the Hearing Officer that there are no genuine issues of material fact, the Hearing Officer may proceed without an evidentiary hearing. The Hearing Officer shall, however, allow the Participants the opportunity to file briefs. When the Hearing Officer issues an initial opinion granting a motion for summary disposition in whole or in part, the ruling shall set forth the rationale for the grant. An initial opinion of the Hearing Officer granting summary disposition shall be confirmed, rejected or modified in a final order issued by the Hearing Panel.

### **1.5.4 Status Hearings**

Any Participant may request, and the Hearing Officer may call, a status hearing at any time subsequent to the prehearing conference to address issues that have arisen between the Participants. Such issues may include, but are not limited to, discovery disputes and scheduling matters. The Hearing Officer shall direct the NERC Director of Compliance to issue a notice of status hearing that sets forth the date, time and place for the hearing, and identifies the matters to be addressed at the hearing.

### **1.5.5 Motions**

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit. Unless otherwise specified by the Hearing Officer, responses to motions

shall be filed within fourteen (14) calendar days after service of the motion, and replies to responses shall be filed within seven (7) calendar days after service of the responses; however, a Hearing Officer may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer, the filing of a motion does not stay the proceeding or extend any scheduled dates in the proceeding.

### **1.5.6 Experts**

A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign 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. The Participant employing the expert shall propose the agreement for approval via a motion, and its approval shall be subject, in addition to consideration of any objections by other Participants, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.

### **1.5.7 Inspection and Copying of Documents in Possession of Staff**

#### **a) Documents to be Available for Inspection and Copying**

- (1) Within five (5) calendar days after issuance of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, all Documents prepared or obtained by Staff 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 NERC 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 NERC.

The sole bases pursuant to which Staff shall be authorized to withhold Documents from inspection and copying shall be the bases set forth in Paragraph 1.5.7(b); provided, however, 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 Panel 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 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 Documents have been made available to a Respondent for inspection and copying as set forth in Subparagraph (a), the additional Documents shall be made available to the Respondent not later than fourteen (14) calendar days after Staff receives such Documents. If a date for the evidentiary hearing has been scheduled, Staff shall make the additional Documents available to the Respondent not less than ten (10) calendar days before the hearing. If Staff receives such Documents ten or fewer calendar days before the hearing is scheduled to begin or after the hearing begins, Staff shall make the additional Documents available immediately to the Respondent.
- (3) Nothing in subparagraph (a)(1) shall limit the discretion of NERC to make any other Document available to the Respondent or the authority of the Hearing Officer to order the production of any other Documents or information by any Participant.

**b) Documents That May Be Withheld by Staff**

- (1) Staff may withhold a Document from inspection and copying by the Respondent if:
  - (A) the Document is privileged to Staff or constitutes attorney work product of Staff's counsel (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);
  - (B) the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that shall not be offered in evidence;
  - (C) the Document would disclose (i) an examination, investigatory or enforcement technique or guideline of NERC, 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 NERC, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

- (D) the Hearing Officer grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

Provided, that where a Document contains information of the type listed in Subparagraphs (A), (B), (C) or (D) that is capable of being redacted, Staff shall make the Document available for inspection and copying by Respondent in redacted form.

- (2) Nothing in Subparagraph (b)(1)(B), (C), or (D) authorizes Staff to withhold a Document, or a part thereof, that contains exculpatory evidence. Nothing in Subparagraph (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 Subparagraph (b)(1). Upon review, the Hearing Officer may order Staff to make any Document withheld available to the Respondent(s) for inspection and copying.

**d) Timing of Inspection and Copying**

Except as set forth in this Paragraph, the Hearing Officer shall determine the schedule of production of Documents for inspection and copying, provided that the Hearing Officer may modify any time period for production set forth in this Paragraph as warranted by the circumstances.

**e) Place and Time of Inspection and Copying**

Documents subject to inspection and copying pursuant to this Paragraph shall be made available to the Respondent for inspection and copying at the NERC office where the Documents are ordinarily maintained, or at such other office as the Hearing Officer, in his or her discretion, shall designate, or as the Participants otherwise agree. A Respondent shall be given access to the Documents at NERC's offices during normal business hours. A Respondent shall not be given custody of the Documents or be permitted to remove the Documents from NERC's offices.

**f) Copying Costs**

A Respondent may obtain a photocopy of all Documents made available for inspection. A Respondent shall be responsible for the cost of photocopying. Unless otherwise ordered by the Hearing Officer, charges for copies made at the request of a Respondent shall be at a rate to be established by NERC.

**g) Failure to Make Documents Available — Harmless Error**

In the event that a Document required to be made available to a Respondent pursuant to this Paragraph is not made available by Staff, no rehearing or amended decision of a proceeding already heard or decided shall be required 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 Panel shall determine whether the failure to make the Document available was harmless error.

### **1.5.8 Other Discovery Procedures**

In addition to the production of Documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods 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. Unless otherwise directed by the Hearing Officer or Hearing Panel upon motion by a Participant or by the Hearing Officer, or by the Hearing Panel 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) The provisions of Subparagraphs (d), (e) and (f) of Paragraph 1.5.7 shall apply to any such discovery.
- b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(b)(2)) shall not be applicable.
- c) The Hearing Officer and the Hearing Panel have the authority to issue orders to compel the appearance by or production of Documents or information by, only any 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 Panel 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) 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) 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 Panel, (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 Panel.
- f) Unless otherwise ordered by the Hearing Officer or Hearing Panel, 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 calendar days from the date of service of the request or date of the order.

- g) 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, the Hearing Officer may order the Participant to make any Document withheld available to any other Participant or Participants for inspection and copying.
- h) 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 Panel shall determine whether the failure to make the Document available was harmless error.
- i) Unless otherwise ordered by the Hearing Officer or Hearing Panel, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.
- j) Notwithstanding (f) and (i), however, if the shortened hearing procedure in 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.

The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives: (i) full disclosure of all relevant Documents and information; (ii) the exercise of due diligence in the conduct of discovery by a Participant; and (iii) 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**

Unless the Hearing Officer orders otherwise and with the exception of (i) any adverse Participant examination pursuant to 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 testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. Where a Participant intends to use a Document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (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 the evidentiary hearing.

Compliance Staff shall file the Documents it intends to offer into evidence as its direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, first. The Respondent 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 Respondent's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, third.

If appropriate due to the number and/or complexity of the issues, the Hearing Officer may allow for the Respondent 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 Respondent's rebuttal case.

Each round of evidence shall be limited in scope to responding to the preceding round of evidence, except that the Respondent's direct case may exceed the scope of Staff's direct case if necessary for the Respondent to set forth its direct case fully.

The Participants shall file the Documents they intend to offer into evidence in accordance with the Hearing Officer's schedule, as it may be amended. Such filings of written testimony and other evidence in advance of the evidentiary hearing shall not entitle the Documents to be admitted into the evidentiary record. The Participants must offer their witnesses' testimony and other proposed evidence for admission into the evidentiary record during the evidentiary hearing.

Any Participant who fails, without good cause shown, to comply with the Hearing Officer's schedule for the filing of written testimony and other evidence in advance of the evidentiary hearing may be limited in the presentation of its evidence during the evidentiary hearing or have its participation in the evidentiary hearing otherwise restricted by the Hearing Officer to avoid undue prejudice and delay.

#### **1.5.10 Protective Orders**

- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as the ERO (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 the ERO or any federal, state or foreign regulatory authority. Nothing in this Subparagraph 1.5.10(b) shall require Staff to produce any Documents it is entitled to withhold under 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 Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
  - g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

### **1.5.11 Pre-Evidentiary Hearing Memorandum**

The Hearing Officer or the Hearing Panel may request, as needed on a case by case basis due to the number or complexity of the issue(s), the submission of memoranda prior to the evidentiary hearing that outline each Participant's position on the issue(s) in dispute, the key facts and arguments, and the applicable Reliability Standard, rules, orders or other authority. The purpose of such memoranda will be to aid the Hearing Officer and Hearing Panel in preparation for the evidentiary hearing. A Participant will not be deemed to have waived any issue, fact or

argument that is not set forth in a pre-evidentiary hearing memorandum. The Hearing Officer may establish page limitations on such submissions.

## **1.6 Evidentiary Hearing Procedure**

### **1.6.1 Evidentiary Hearings**

The purpose of the evidentiary hearing shall be to admit the Participants' evidence into the record, and for each Participant to have the opportunity to cross-examine the other Participant's witnesses. A schedule for briefs, unless waived by the Participants, shall be set at the conclusion of the evidentiary hearing. The evidentiary hearing also may be used to address any other issue pending between the Participants.

### **1.6.2 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 Panel. Any Participant's request for such statements, or a Hearing Officer or Hearing Panel notice requiring such statements, shall be made at least ten (10) calendar days in advance of the start of the evidentiary hearing.

### **1.6.4 Right of Participant to Present Evidence**

Subject to compliance with the requirements of these Hearing Procedures concerning the timing of submission of written testimony and other evidence, a Participant has the right to present such evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

### **1.6.5 Exhibits**

All material offered in evidence, 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. Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

### **1.6.6 Witness Attendance at Evidentiary Hearing**

Each witness shall attend the evidentiary hearing in person unless a Participant has been informed in advance of the evidentiary hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the Hearing Panel have any questions for the witness, in which event the witness does need not be present at the evidentiary hearing. All testimony offered at the evidentiary hearing is to be under oath or affirmation. If a witness is not required to attend the evidentiary hearing, then the Participant on whose behalf the witness prepared testimony shall submit an affidavit of the witness attesting to the veracity of the witness' testimony, and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

### **1.6.7 Admission of Evidence**

Compliance Staff shall offer its exhibits into evidence first and the Respondent second, unless the Participants agree otherwise.

Except for witnesses who are not required to attend the evidentiary hearing, the Participants shall call each witness in turn. Following the witness' swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony or exhibits that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant. The Participant whose witness has made changes or written corrections to written testimony and exhibits shall file corrected copies with the NERC Director of Compliance and provide corrected copies to the Hearing Officer and other Participant.

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Paragraph 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Panel, in accordance with Paragraph 1.6.14, and then for redirect examination in accordance with Paragraph 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

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 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 CCC's policy to discourage witness testimony at an evidentiary hearing when a Participant has not served the witness' written testimony in advance of the evidentiary hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

### **1.6.8 Evidence that is Part of a Book, Paper or Document**

When relevant and material matter offered in evidence is embraced in a book, paper or Document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable. If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or Document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit. All other Participants shall be afforded an opportunity to examine the book, paper or Document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

### **1.6.9 Stipulations**

The Participants may stipulate to any relevant fact or the authenticity of any relevant Document. Stipulations may be made in writing or entered orally in the record. Notwithstanding stipulation, the Hearing Officer may require evidence of the facts stipulated in order to provide a complete evidentiary record on which to base the final order.

### **1.6.10 Official Notice**

Where relevant and material to the subject matter of the proceeding, the Hearing Officer may, upon request of a Participant, take official notice of any of the following:

- a) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of NERC and Regional Entities.
- b) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of NERC.
- c) State, provincial and federal statutes and municipal and local ordinances.
- d) The decisions of state, provincial and federal courts.
- e) Generally recognized scientific or technical facts within the specialized knowledge of the NERC.
- f) All other matters of which the courts of the United States may take judicial notice.

All requests to take official notice shall be submitted in advance of the evidentiary hearing in accordance with a schedule established by the Hearing Officer. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested. An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

### **1.6.11 Admissibility of Evidence**

Any evidence offered, including that included in a book, paper or Document pursuant to Paragraph 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

The admission of evidence shall not be limited by the generally recognized rules of evidence as applied in the courts of the United States or of the states, although the Hearing Officer may take such rules of evidence into consideration in ruling on the admissibility of evidence. The Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and shall admit evidence if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.

Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

**1.6.12 Offer of Proof**

Any Participant who has had evidence excluded may make an offer of proof on the record. The offer of proof may consist of a statement made on the record of the substance of the evidence that the Participant claims would have been adduced, or any written or documentary exhibit that the Participant sought to introduce. Any such exhibit shall be retained as part of the record.

**1.6.13 Reservation of Evidentiary Ruling**

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto. If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the evidentiary hearing to ensure a full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

**1.6.14 Cross-Examination**

Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the Hearing Panel may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the Hearing Panel 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 Panel. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the Hearing Panel. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

**1.6.16 Examination of Adverse Participant**

Any Participant may call any adverse Participant, or any employee or agent thereof, during the evidentiary hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination. If a Participant intends to call an adverse Participant for examination, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) calendar 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) calendar days in advance of the evidentiary hearing. 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**

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the evidentiary hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

## **1.7 Post- Evidentiary Hearing Procedure**

### **1.7.1 Briefs**

- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.
- b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.
- c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, the number and complexity of the issues, and the objective of expedition.
- d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- f) The Hearing Officer may, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.
- g) The Hearing Officer may establish reasonable page limitations applicable to briefs.

### **1.7.2 Other Pleadings**

Post-hearing pleadings other than briefs are permitted, but, absent good cause shown, such pleadings may not seek to introduce additional evidence into the record.

### **1.7.3 Draft Initial Opinions**

The Hearing Officer may permit or require Participants to file draft initial opinions that set forth the Participants' proposed findings of fact and conclusions.

### **1.7.4 Hearing Officer's Initial Opinion**

Except as otherwise ordered by the Hearing Panel, 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 Panel's review and consideration. The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Remedial Action Directive that the Hearing Officer proposes the Hearing Panel require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed Notice of Penalty. The initial opinion shall note if the subject of the proceeding has



been deemed to involve a 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 Paragraph 1.5.10.

### **1.7.5 Exceptions**

- a) Within twenty-one (21) calendar 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) calendar days after the time for filing briefs on exceptions or such other time as is set by the Hearing Officer, any Participant may file as a reply, a "brief in reply to exceptions."
- b) Exceptions and replies thereto with respect to statements, findings of fact or conclusion in the initial opinion must be specific and must be stated and numbered separately in the brief. With regard to each, the Participant must specify each error asserted, and include a concise discussion of any policy considerations applicable and any other arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed (1) together in one brief; or (2) in two separate documents, one designated as the brief containing arguments, and the other 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 page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such page limitations shall not apply to a Participant's proposed replacement language.
- g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

### **1.7.6 Oral Argument**

The Hearing Panel may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues. If oral argument is held where briefs have been filed, argument may be limited to issues identified

by the Hearing Panel. The Hearing Panel will direct the NERC Director of Compliance to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record, and shall contain accurate record citations. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral argument shall be served on all Participants not less than 48 hours prior to the time and date of oral argument.

### **1.7.7 Additional Hearings**

After the evidentiary record has been closed but before issuance of an initial opinion, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the Hearing Panel'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 Panel Final Order**

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Panel shall issue its final order. Issuance of a final order shall require (i) a quorum of the Hearing Panel, 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 Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (which number of members voting shall not be less than a quorum). The Hearing Panel shall strive, but shall not be required, to issue its final order within thirty (30) calendar days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The final order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The Hearing Panel will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, Remedial Action Directive or Mitigation Plan required. If the final order imposes a Penalty, it shall be entitled "Final Order and Notice of Penalty". The final order shall note if the subject of the proceeding has been deemed to involve a 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 Paragraph 1.5.10. The Hearing Panel shall direct the NERC Director of Compliance 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 pursuant to Section 400 of the Rules of Procedure.

### **1.7.9 The Record**

The NERC Director of Compliance 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:

- a) Notice of Alleged Violation and Respondent's response thereto;
- b) Respondent's proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- c) Remedial Action Directives and the Respondent's notice contesting the Remedial Action Directive;
- d) Respondent's request for a hearing;
- e) Participant filings, motions, and responses;
- f) Notices, rulings, orders and other issuances of the Hearing Officer and Hearing Panel;
- g) Transcripts;
- h) Evidence received;
- i) Written comments submitted in lieu of written testimony;
- j) Matters officially noticed;
- k) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- l) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- m) Post-hearing pleadings other than briefs;
- n) The Hearing Officer's initial opinion;
- o) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- p) The Hearing Panel's final order, any Notice of Penalty issued therewith, and the NERC Director of Compliance's notice transmitting the final order to the Participants;
- q) All notices of ex parte communications; and
- r) Any notifications of recusal and motions for disqualification of a member of the Hearing Panel or Hearing Officer or Technical Advisor and any responses or replies thereto.

### **1.7.10 Appeal**

A final order of the Hearing Panel may be appealed to NERC in accordance with NERC's Rules of Procedure, Subsections 409.5 et seq.

## **1.8 Settlement**

Settlements may be entered into at any time pursuant to Section 5.4 of the NERC Compliance Monitoring and Enforcement Program and NERC's settlement procedures.

## **1.9 Remedial Action Directives**

### **1.9.1 Initiation of Remedial Action Directive Hearing**

Staff may issue a Remedial Action Directive to a Respondent 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 Respondent in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program.

The Respondent may contest the Remedial Action Directive by filing a written notice with the NERC Director of Compliance that states that the Respondent contests the Remedial Action Directive and that the Respondent requests a Remedial Action Directive hearing. The Respondent shall attach a copy of the Remedial Action Directive to its written notice. The Respondent 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 Respondent does not give written notice to the NERC Director of Compliance within the required time period, the Respondent shall be deemed to have waived its right to contest the Remedial Action Directive.

The NERC Director of Compliance shall assign a docket number, and issue a notice of hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.4.1.

### **1.9.2 Remedial Action Directive Hearing Procedure**

Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Paragraph 1.9.2. The full hearing procedures described in Paragraphs 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Paragraph.

The Remedial Action Directive hearing may be presided over by a Hearing Officer and will be conducted according to the following guidelines:

- a) The Hearing Officer or the Hearing Panel will hold a prehearing conference within two (2) business days after receipt of the Respondent's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Respondent 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) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Respondent's closing argument.

- e) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the Hearing Panel. Oral argument shall not be held.
- f) The Hearing Panel shall issue a summary written decision within ten (10) calendar days following the hearing, stating whether the Respondent shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.

Within thirty (30) calendar days following issuance of its summary written decision, the Hearing Panel shall issue a full written decision. The written decision shall state the conclusions of the Hearing Panel with respect to the Remedial Action Directive, and shall explain the reasons for the Hearing Panel's conclusions.

The NERC logo consists of the letters "NERC" in a bold, black, sans-serif font. A thick blue horizontal bar is positioned directly beneath the letters.

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

# NERC Compliance and Certification Committee

## Hearing Procedures for Use in Appeals of Certification Matters

CCC Monitoring Program — CCCPP-005-1

A faint, light blue map of North America is visible in the background of the lower half of the page. The map shows the outlines of the United States, Canada, and Mexico.

to ensure  
the reliability of the  
bulk power system

Version 1.0

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<b>NERC Compliance and Certification Committee</b>		<b>CCCPP-005-1</b>
<b>Title:</b> Hearing Procedures for Use in Appeals of Certification Matters		
<b>Version: 1.0</b>	<b>Revision Date: n/a</b>	<b>Effective Date: June 10, 2010</b>

### **Summary**

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in Section 504 of the NERC Rules of Procedure (“ROP”) conducted into appeals to resolve any disputes related to Certification activities.

### **Revision History**

<b>Date</b>	<b>Version Number</b>	<b>Comments</b>
03/03/09	1.0	Approved by CCC
05/06/09	1.0	Approved by the Board of Trustees

# Table of Contents

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<b>1.</b>	<b>Hearing Procedures for Use in Appeals of Certification Matters .....</b>	<b>1</b>
<b>1.1</b>	<b>Applicability, Definitions and Interpretation.....</b>	<b>1</b>
<b>1.2</b>	<b>General Provisions including Filing, Service, Transcription and Participation.....</b>	<b>4</b>
<b>1.3</b>	<b>Initiation of the Hearing Process .....</b>	<b>9</b>
<b>1.4</b>	<b>General Hearing Procedure .....</b>	<b>10</b>
<b>1.5</b>	<b>Hearing Procedure.....</b>	<b>15</b>



# 1. Hearing Procedures for Use in Appeals of Certification Matters

## 1.1 Applicability, Definitions and Interpretation

### 1.1.1 Procedure Governed

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in Section 504 and Appendix 5 of the NERC Rules of Procedure (“ROP”) conducted into appeals to resolve any disputes related to Certification activities. Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Panel established by the CCC in accordance with Section 8.3 of the CCC Charter and Appendix 5A of the NERC ROP. The composition of the Hearing Panel, 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 Panel on any matter brought before it for decision.

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 entity seeking Certification.

### 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 Panel, for good cause shown, either upon the Hearing Officer’s or the Hearing Panel’s own motion or upon the motion of any Participant.

### 1.1.3 Standards for Discretion

The CCC’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 CCC 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 NERC’s conflict of interest policy.

- e) Impartiality — Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Respondents should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) Expedition — Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

#### **1.1.4 Interpretation**

- a) These Hearing Procedures shall be interpreted in such a manner as will aid in effectuating the Standards for Discretion set forth in Paragraph 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.
- b) Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.
- c) To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

#### **1.1.5 Definitions**

Capitalized terms used in these Hearing Procedures shall have the definitions set forth in Appendix 2 of the Rules of Procedure. For convenience of reference, definitions of the following terms that are used in these Hearing Procedures are also set forth below:

“Bulk Power System,” for the purposes of these Hearing Procedures, means Bulk Electric System.

“Certification” means 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. Certification activities are further described in Section 500 and Appendix 5 of the NERC Rules of Procedure.

“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 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 who is responsible for the management and supervision of the 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.

“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.

“FERC” means the United States Federal Energy Regulatory Commission.

“Hearing Officer” means (1) a CCC member or (2) an individual employed or contracted by NERC, as designated and approved by the CCC to preside over hearings conducted pursuant to these Hearing Procedures; 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 Paragraph 1.1.1 above. Specifically, the CCC shall not have a standing Hearing Panel. When a hearing is to be conducted, the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members to serve on the Hearing Panel shall be selected by vote of a valid quorum of the CCC. Voting members of the CCC at arm’s length from parties to the hearing may be nominated or volunteer to stand for selection to the Hearing Panel. One or more alternates may also be selected if the CCC deems appropriate for the circumstances. A member may serve on more than one Hearing Panel concurrently. A Hearing Panel is disbanded upon conclusion of the hearing proceedings for which it was formed.

“Participant” means a Respondent and any other Person who is allowed or required by FERC to participate as an intervenor in a proceeding conducted pursuant to these Hearing Procedures, and as used herein shall include the members of the Certification Staff that participate in a proceeding.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Reliable Operation” 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.

“Respondent” means the Registered Entity who is the subject of the Certification decision that is the basis for the proceeding.

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

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies NERC’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 Panel.

## **1.2 General Provisions including Filing, Service, Transcription and Participation**

### **1.2.1 Contents of Filings**

All filings made with the CCC must contain:

- a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;
- b) A heading that describes the filing and the Participant on whose behalf the filing is made;
- c) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;
- d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record of the hearing, if available, or other documents; and
- e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

### **1.2.2 Form of Filings**

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.

- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### **1.2.3 Submission of Documents**

#### **a) Where to File**

Filings shall be made with the NERC Director of Compliance located at NERC's principal office. The office will be open from 8 a.m. to 5 p.m., Eastern, each day except Saturday, Sunday, legal holidays and any other day declared by NERC.

#### **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 Panel. Filings will be considered made when they are date stamped received by the NERC Director of Compliance. To be timely, filings must be received no later than 5 p.m., Eastern, 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 NERC Director of Compliance.

#### **d) Number of Copies to File**

One original and seven exact copies of any document shall be filed. The NERC Director of Compliance will provide the Hearing Officer, if any, and each member of the Hearing Panel 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 Panel. 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 NERC Director of Compliance 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, NERC Director of Compliance and the Respondent's designated agent for service as registered on the NERC Compliance Registry 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 NERC Director of Compliance.

**b) By Participants**

Any Participant filing a document in a proceeding must serve a copy of the document on each individual whose name is on the service list for the proceeding. Unless otherwise provided, service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

**c) By the NERC Director of Compliance**

The NERC Director of Compliance shall serve all issuances of the Hearing Officer and Hearing Panel upon the members of the Hearing Panel 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 Hearing Panel shall ensure that the NERC Director of Compliance has a copy of the record of a proceeding at the time it issues a final order.

**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) calendar 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 NERC office 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 NERC office 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 Panel 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 Panel 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 Panel upon motion made at any time on such terms and conditions as are deemed to be just and reasonable.

### **1.2.8 Transcripts**

A full and complete record of all hearings, including any oral argument, shall be transcribed verbatim by a certified court reporter, except that the Hearing Officer or the Hearing Panel may allow off-the-record discussion of any matter provided the Hearing Officer or the Hearing Panel states the ruling on any such matter, and the Participants state their positions or agreement in relation thereto, on the record. Unless otherwise prescribed by the Hearing Officer or the Hearing Panel, a Participant may file and serve suggested corrections to any portion of the transcript within thirty-five (35) calendar days from the date on which the relevant portion of the transcript was taken, and any responses shall be filed within ten (10) calendar days after service of the suggested corrections. The Hearing Officer or the Hearing Panel shall determine what changes, if any, shall be made, and shall only allow changes that conform the transcript to the truth and ensure the accuracy of the record.

NERC will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for the Hearing Officer and the Hearing Panel. 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 Panel 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 Panel. 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 NERC's principal office unless the Hearing Officer or the Hearing Panel 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 or the Hearing Panel. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

#### **1.2.12 Interventions Are Not Permitted**

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC or another Applicable Governmental Authority (in the case of non-U.S.-related proceedings), no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

#### **1.2.13 Proceedings Closed to the Public**

No hearing, oral argument or meeting of the Hearing Panel shall be open to the public, and no notice, ruling, order or any other issuance of the Hearing Officer or Hearing Panel, 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) determines that public release is appropriate. Only the members of the Hearing Panel, 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 NERC Director of Compliance shall maintain a system for docketing proceedings to record appeals of Certification decisions. A docketed proceeding shall be created upon the issuance of a notice of an appeal of a Certification decision. Unless NERC provides a different docketing system that will be used, 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 "NERC", followed by a dash ("-"), followed by the letters "CERT" and 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 Hold Harmless**

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the NERC and the CCC, including without limitation their Members, Board of Trustees, Compliance Committee, any other committees or subcommittees, Staff, contracted employees, Hearing Panel 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 Respondent's Option to Request a Hearing**

To appeal a Certification decision, a Respondent must file a statement with the NERC Director of Compliance requesting a Certification hearing within fourteen (14) calendar days after (i) the Certification report or finding is issued, or (ii) the final Regional Entity appeal process ruling is made. If the Respondent does not file a hearing request within the time period set forth in this Paragraph, then the Respondent will be deemed to have agreed and waived any objection to the Certification decision.

A hearing request shall include:

- a) A concise statement of the error or errors contained in the decision being appealed;
- b) A clear statement of the relief being sought;
- c) Argument in sufficient detail to justify such relief; and
- d) Attachments of the full text of the Certification decision being appealed and whichever of the following are applicable:
  - 1) the Respondent's statement explaining and supporting its disagreement with the Certification decision;
  - 2) all Documents, including affidavits, supporting its position; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.

#### **1.3.2 Hearing Procedure**

The Hearing Panel may utilize a Hearing Officer to preside over the hearing procedure in accordance with Paragraph 1.4.2. No evidentiary hearing will be held, and the Participants will not present witness testimony or file briefs, except as requested by the Hearing Officer and/or the Hearing Panel. Instead, the following events shall take place within the following periods:

- a) Within ten (10) calendar days after the notice of hearing is issued, the Staff shall file:
  - 1) initial comments stating Staff's position on all issues raised by Respondent and the rationale in support of Staff's 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.
- b) Within seven (7) calendar days of Staff's filing pursuant to Subparagraph (a), the Respondent shall file:

- 1) responsive comments stating the Respondent's position on all issues presented by Staff and the rationale in support of Respondent's position, including all factual and legal argument which respond to Staff's filing;
- 2) all Documents that the Respondent 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.

The Hearing Officer or Hearing Panel may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Panel to issue the final order within twenty-nine (29) calendar days of the notice of hearing.

## **1.4 General Hearing Procedure**

### **1.4.1 Notice of Hearing**

Within seven (7) calendar days of a Respondent requesting a hearing pursuant to Paragraph 1.3, the NERC Director of Compliance 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 of the hearing, which should occur no less than twenty-one (21) calendar days and no later than twenty-eight (28) calendar days after the notice of hearing is issued.

### **1.4.2 Hearing Officer**

The CCC 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 Panel as set forth in Paragraph 1.4.3. Members of the Hearing Panel may attend any aspect of the hearing.

The Hearing Panel may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing through the issuance of the opinion and any administrative hearing functions thereafter. 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:

- a) To administer oaths and affirmations;
- b) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- c) 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;
- d) 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;
- e) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;

- f) To issue protective orders pursuant to Paragraph 1.4.10; and
- g) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

If the Hearing Panel uses a Hearing Officer to preside over a hearing, the Hearing Panel shall disclose the identity, employment history and professional affiliations of the Hearing Officer within two (2) calendar days of the Hearing Officer's assignment to the proceeding, and Participants to the hearing may raise objections to the Hearing Officer's participation in accordance with Paragraph 1.4.4.

### **1.4.3 Hearing Panel**

The Hearing Panel is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:

- a) The Hearing Panel shall receive all filings in a hearing.
- b) The Hearing Panel or any individual member thereof may, but is not required to, submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- c) The Hearing Panel 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; or (ii) present oral argument on an issue. To this end, the Hearing Panel 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.
- d) To the extent that the Hearing Panel disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.
- e) The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order.

### **1.4.4 Disqualification**

A Hearing Officer, Technical Advisor or member of the Hearing Panel shall recuse himself or herself from a proceeding if participation would violate the NERC's applicable conflict of interest policy.

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the Hearing Panel from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by Paragraph 1.4.6, 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 five (5) business days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

The Hearing Officer shall issue a proposed ruling for the Hearing Panel's consideration upon the filing of a motion for disqualification unless the Hearing Officer is the subject of the motion. The Hearing Panel, without the participation of any member who is the subject of the motion, shall issue a final ruling on the motion. If the Hearing Officer is recused or disqualified, the Hearing Panel will appoint a replacement Hearing Officer. To ensure fairness to the Participants and expedite completion of the proceeding when a replacement Hearing Officer is appointed after a hearing has commenced, the replacement Hearing Officer may recall any witness or may certify familiarity with any part or all of the record.

If a quorum (as defined in Paragraph 1.5.15) of the Hearing Panel does not remain after any recusals and rulings on motions for disqualification, then the CCC shall appoint a new member(s) to the Hearing Panel to create a quorum, which new member(s) shall serve on the Hearing Panel through the conclusion of the proceeding but not thereafter. The CCC shall only appoint the number of new members as are necessary to create a quorum. Any new member of the Hearing Panel shall be subject to the provisions applicable herein to all Hearing Panel members.

#### **1.4.5 Technical Advisor**

The Hearing Officer and/or the Hearing Panel 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 the proceeding in which technical advice would be rendered, and shall not be a member of Staff participating in the proceeding on which such technical advice would be rendered.

If the Hearing Officer or Hearing Panel uses a Technical Advisor to assist in any hearing, the Hearing Officer or Hearing Panel shall disclose the identity, employment history and professional affiliations of the Technical Advisor within two (2) calendar days of the Technical Advisor's assignment to the proceeding, and Participants to the hearing may raise objections to the Technical Advisor's participation in accordance with Paragraph 1.4.4.

#### **1.4.6 No Ex Parte Communications**

- a) Once a Respondent requests a hearing pursuant to Paragraph 1.3:
  - 1) neither the Hearing Panel, 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 Panel, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
    - A) in writing if the writing is simultaneously provided to all Participants; or
    - B) orally if a representative for every Participant is present in person or by telephone;

- C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- b) The proscription in Subparagraph (a)(1) does not prohibit members of the Certification Staff from communicating with the Respondent, and representatives, agents or employees thereof on any topic, provided that any member of the Certification 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.
- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the Hearing Panel, the Hearing Officer and any Technical Advisor.
- d) Any member of the Hearing Panel, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) calendar 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.

#### **1.4.7 Appearances**

Participants shall file written appearances within seven (7) calendar days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

A Participant's written appearance shall state, with respect to each individual that the Participant identifies for service, the individual's name, address, telephone number, and facsimile number and email address, if available, where service shall be made.

A Participant may withdraw any individual from the Participant's representation or otherwise change the identity of individuals authorized to represent the Participant in a proceeding by filing a notice of a change in service list.

Any attorney appearing on behalf of a Participant shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia or of another Applicable Governmental Authority (in the case of non-U.S.-related proceedings).

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.

#### **1.4.8 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.

#### **1.4.9 Experts**

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. The Participant employing the expert shall propose the agreement for approval via a motion, and its approval shall be subject, in addition to consideration of any objections by other Participants, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.

#### **1.4.10 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 a 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 Regional Entity or any federal, state or foreign regulatory authority.
- 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 Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
  - g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

## **1.5 Hearing Procedure**

### **1.5.1 Order of Argument**

In all proceedings Respondent shall open and close.

### **1.5.2 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.

### **1.5.3 Exhibits**

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. Each exhibit must be marked for identification. Except for exhibits created for demonstrative purposes, only Documents (including affidavits) previously filed in the matter may be presented as exhibits. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence and must provide copies to the Participants and the Hearing Panel.

### **1.5.4 Witness Attendance at Hearing**

Each witness shall attend the hearing in person only if a Participant has been informed in advance of the hearing that the witness needs to be present at the hearing. All testimony offered at the hearing is to be under oath or affirmation.

### **1.5.5 Admission of Evidence**

Respondent shall offer its exhibits into evidence first and the Certification Staff second, unless the Participants agree otherwise.

If witnesses are required to attend the hearing, the Participants shall call each such witness in turn. Following the witness's 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 NERC Director of Compliance and provide corrected copies to the Hearing Officer and other Participant.

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness's testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness's testimony, or any part thereof, as set forth in Paragraph 1.5.8. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Panel, in accordance with Paragraph 1.5.11, and then for redirect examination in accordance with Paragraph 1.5.12. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

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 hearing unless a Participant has served the witness's written testimony in advance of the hearing in accordance with Paragraph 1.3.1. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the CCC's policy to discourage witness testimony at a hearing when a Participant has not served the witness's written testimony in advance of the 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.

### **1.5.6 Evidence that is Part of a Book, Paper or Document**

When relevant and material matter offered in evidence is embraced in a book, paper or Document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable. If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or Document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or



material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit. All other Participants shall be afforded an opportunity to examine the book, paper or Document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

### **1.5.7 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.

### **1.5.8 Official Notice**

Where relevant and material to the subject matter of the proceeding, the Hearing Officer may, upon request of a Participant, take official notice of any of the following:

- a) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of NERC and Regional Entities.
- b) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of NERC and Regional Entities.
- c) State, provincial and federal statutes and municipal and local ordinances.
- d) The decisions of state, provincial and federal courts.
- e) Generally recognized scientific or technical facts within the specialized knowledge of the NERC.
- f) All other matters of which the courts of the United States may take judicial notice.

All requests to take official notice shall be submitted as part of the filings made pursuant to Paragraph 1.3.1. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested. An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

### **1.5.9 Admissibility of Evidence**

Any evidence offered shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

The admission of evidence shall not be limited by the generally recognized rules of evidence as applied in the courts of the United States or of the states, although the Hearing Officer may take such rules of evidence into consideration in ruling on the admissibility of evidence. The Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and shall admit evidence if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.

Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

**1.5.10 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.

**1.5.11 Evidentiary Ruling**

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made.

**1.5.12 Cross-Examination**

Any witness personally attending the hearing shall be tendered for cross-examination subsequent to the admission of the witness's testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the Hearing Panel may ask the witness questions following the conclusion of the witness's cross-examination by the other Participant, and prior to the witness's redirect examination pursuant to Paragraph 1.5.12. If a member of the Hearing Panel 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.

**1.5.13 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 Panel. Any redirect examination shall be limited in scope to the witness's cross-examination and questions of the Hearing Officer and members of the Hearing Panel. If a member of the Hearing Panel 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.

**1.5.14 Close of the Evidentiary Record**

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

**1.5.15 Closing Statements**

At the close of the hearing, Participants shall present oral closing statements. The Hearing Officer may establish reasonable time limitations applicable to closing statements.

**1.5.16 Hearing Panel Final Order**

Following the hearing, the Hearing Panel shall issue its final order. Issuance of a final order shall require (i) a quorum of the Hearing Panel, 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 Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (which number of members voting shall

not be less than a quorum). The Hearing Panel shall issue its final order within one (1) day following the close of the hearing. 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 Paragraph 1.5.10. The Hearing Panel shall direct the NERC Director of Compliance 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 pursuant to Section 400 of the Rules of Procedure.

#### **1.5.17 The Record**

The NERC Director of Compliance shall maintain the record for all dockets. The record shall include all filings made in the matter, a transcript of the hearing, including all exhibits presented, the final order and any other written correspondence or communications between the Participants and either the Hearing Officer or the Hearing Panel.

#### **1.5.18 Appeal**

A final order of the Hearing Panel may be appealed to NERC in accordance with the NERC Organization Registration and Certification Manual, Section VI, Paragraph 4 of Appendix 5 to the NERC ROP.

The NERC logo consists of the letters "NERC" in a bold, black, sans-serif font. A thick blue horizontal bar is positioned directly beneath the letters.

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

# NERC Compliance and Certification Committee Mediation Procedures

CCC Monitoring Program — CCCPP-006-1

to ensure  
the reliability of the  
bulk power system

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<b>NERC Compliance and Certification Committee</b>		<b>CCCPP-006-1</b>
<b>Title: Mediation Procedures</b>		
<b>Version: 1.0</b>	<b>Revision Date: n/a</b>	<b>Effective Date: June 10, 2010</b>

**Summary:**

The NERC Compliance and Certification Committee (CCC) Mediation Program is designed as an informal, voluntary process in which a CCC mediation panel assists NERC and a Regional Entity to understand and work through disagreements or disputes concerning NERC performance audits of a Regional Entity's Compliance Monitoring and Enforcement Program.

**Revision History**

<b>Date Version</b>	<b>Number</b>	<b>Comments</b>
12/09/08	1.0	Approved by the Compliance and Certification Committee
05/06/09	1.0	Approved by the Board of Trustees

# Table of Contents

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<b>1. Introduction .....</b>	<b>1</b>
<b>2. Mediators .....</b>	<b>2</b>
<b>3. Mediation Process.....</b>	<b>3</b>
Introductory Remarks .....	3
Statements of the Issue (s) by the Parties .....	4
Information Gathering .....	4
Issue Identification .....	4
Determination and Discussion of Options.....	4
Written Mediation Settlement Agreement .....	4

# 1. Introduction

The NERC Compliance and Certification Committee (CCC) Mediation Program is designed as an informal, voluntary process in which a CCC mediation panel assists NERC and a Regional Entity (NERC and the Regional Entity individually a Party, collectively, the Parties) to understand and work through disagreements or disputes concerning NERC performance audits of a Regional Entity's Compliance Monitoring and Enforcement Program. Mediation is the intervention into a dispute or negotiation of an acceptable, impartial, and neutral third party panel that has no decision-making authority. The objective of the neutral third-party is to assist the Parties in voluntarily reaching an acceptable resolution of the issues in dispute. The mediation process is voluntary and does not eliminate other dispute resolution options. Also, the mediation process is confidential, whether or not it results in settlement.

This alternative dispute resolution mechanism is intended to be a more collaborative, less adversarial method to attain a mutually agreeable resolution to the dispute, consistent with the NERC Rules of Procedure and without formal hearing proceedings.

The Parties to mediation are not obligated to reach agreement. If they do not reach a consensus, either Party may elect to proceed with other more "traditional" methods of resolving the dispute. In those instances where consensus is reached and memorialized in a written Mediation Settlement Agreement, the agreements of the Parties as expressed therein will be binding and enforceable.

## 2. Mediators

The program follows a model of team mediation — having three mediators facilitate the mediation — in order to ensure a broad spectrum of perspectives and approaches to problem solving.

Once NERC and a Regional Entity have decided to pursue a resolution of their dispute through mediation, each Party will provide the chair of the CCC with introductory information (*i.e.*, brief statements of the nature and history of the dispute, participants' names, and contact information). Each Party must be represented by participants who will have the authority to enter into an agreement to resolve the matter in dispute, if the Parties are able to reach an agreement. The chair then provides the introductory information to three impartial and independent third party neutral members of the CCC to whom the chair assigns to serve as mediators and who are acceptable to both Parties. Subject to the consent of both Parties, the chair may appoint in addition to the CCC members a disinterested professional mediator who is acceptable to both Parties, with the cost of the professional mediator shared equally between the Parties. The mediators may choose, but are not required, to select one of their number as the Lead Mediator to coordinate the process and serve as their primary contact with the Parties; if a professional mediator is appointed by the chair, then that person will serve as the Lead Mediator. After reviewing the information provided by the Parties, the Lead Mediator, if any, or the mediators will communicate with the Parties to arrange an agreeable time and location for the mediation to be held.

Because mediation is an informal process and is only successful when a mutually agreeable resolution occurs, there is no single correct procedure required for mediators to follow. In any specific matter, one or more mediators may elect to discuss individual issues and concerns with one or more of the Parties prior to the session, one or more mediators may elect to wait until the mediation session to hold any discussion. Both approaches are acceptable.

The materials provided as introductory information and all communications made during or in connection with mediation will be kept confidential by the mediators and both Parties, and statements made by the Parties during mediation may not be used against them in later proceedings. The sole exception to this rule of confidentiality would be any written Mediation Settlement Agreement entered into by the Parties, as discussed below. Should the mediation be unsuccessful, no one who participated as a mediator will serve in any capacity in connection with any subsequent legal, regulatory, administrative, or grievance proceeding regarding the subject of the mediation.

Mediators will not provide legal advice or counsel. Mediators also may not be called to testify in any legal, regulatory, administrative, or grievance proceedings concerning the mediation or its subject, nor may they be requested to provide documentation, records, *etc.*, concerning the mediation.



## 3. Mediation Process

Mediators will focus on helping the Parties clearly identify their basic concerns and issues and use this information to develop a mutually agreeable resolution. To succeed, this approach must encourage and require open communication, cooperation, and participation.

Although no single process needs to apply to all mediations, generally a successful mediation will involve six elements:

- Introductory remarks;
- Statements of the issue(s) by the Parties;
- Information gathering;
- Issue identification;
- Determination and discussion of options; and
- A written Mediation Settlement Agreement.

Once the mediation process begins, Parties may discuss their interests and concerns with the mediators (and particularly with the Lead Mediator, if any) at any time.

In some cases, the Parties and mediators may agree that the mediation will adjourn and reconvene at a later agreed upon time and place. All participants should give the mediation every chance to resolve the dispute. Because mediation is a voluntary process, at any time, any participant may comment on any aspect of the process or propose changes. Also at any time, either Party or the mediators has the authority to terminate the mediation for any reason. If the mediation terminates without a written Mediation Settlement Agreement, either Party is free to pursue all other available legal, regulatory, administrative or grievance procedures.

### Introductory Remarks

Early in the mediation, at a time when all participants are present, the mediators will introduce themselves and ask the participants to do likewise. Some mediators may make comments about what they see as the nature of the dispute and seek to confirm or clarify some of the factual data from the introductory information.

The mediators or Lead Mediator may describe ground rules intended to help the mediation move smoothly. Ground rules may include such things as turning off beepers and cell phones, appropriate conduct, mutual respect, note taking, and any other special instructions concerning the mediation. The mediators shall remind the Parties that the mediation process is confidential, whether or not it results in settlement.

From time to time during the mediation, the mediators may ask each Party's participants to meet separately from the other Party, or to "caucus," in order to discuss aspects of the dispute and possible resolution among themselves or with some or all of the mediators. Throughout the process, Parties should try not to interrupt each other; the mediators will give each Party the opportunity to fully share their side.

### **Statements of the Issue (s) by the Parties**

The mediators will allow each Party the opportunity to explain, without interruption, its position and perception of the dispute. This statement is not necessarily a recital of the facts, but it is to give each Party an opportunity to frame the issues and to give the mediator more information on the Party's position. If a Party's attorney(ies) make the initial statement, the mediators may also invite the Party's other participants to supplement the statement. The intent is for each Party and the mediators to better understand the other Party's position or point of view.

### **Information Gathering**

The mediators may ask one or both Parties questions, repeat back key ideas to the Parties, and summarize their understandings. This helps the mediators and Parties build rapport and ensure common understanding. Mediators will attempt to identify common agreements on the facts and to steer the discussion increasingly towards the future rather than merely reiterating the past.

### **Issue Identification**

The mediators will try to identify the Parties' goals and interests in order to reach agreement on the nature of the issues that must be addressed in any resolution and the relationships between those issues. For example, a particular resolution of one issue may necessarily require a certain approach to another issue, or one issue must be resolved prior to another issue being resolved or even meaningfully discussed. It is possible that at some point the Parties may conclude that one or more of their issues can not be resolved through the mediation, but nonetheless decide to set those aside for later proceedings and move on to resolve through the mediation their other disputed issues.

### **Determination and Discussion of Options**

Methods for developing options may include caucuses, group processes, discussion groups or sub-groups, developing hypothetical plausible scenarios, or a mediator's proposal where the mediator puts a proposal on the table and the Parties take turns modifying it. If a caucus is held, discussions in the caucus are confidential and the mediators will not share those discussions with the other Party unless the Party in the caucus specifically asks them to do so.

To better explore potential solutions, the mediators may propose one or more brainstorming sessions by the Parties together or separately in caucus. This can lead to a final agreement, which diffuses the conflict and provides a new basis for future relations. The goal is to find some common ground by exploring lots of options, and to create possible solutions for the Parties to consider. Especially when meeting separately in caucus, through this process a Party may be able to entertain alternative solutions without committing to them as concessions.

### **Written Mediation Settlement Agreement**

Mediation may be terminated at any time by either Party or by the mediators, but mediation has only successfully resolved the subject dispute when the Parties have executed a written Mediation Settlement Agreement.

As the Parties reach a sense that they may be able to agree on all or some of the issues being mediated, the Parties and mediators can begin crafting language to address resolutions of the issues comprising the dispute. This language must be satisfactory to both Parties. The elements and wording of the agreement must be those of the Parties, and need to be specific enough that the Parties' intentions will be clear to others who may read it and to each participant at a later time.

It is important that each element of the Mediation Settlement Agreement be listed separately and be specific, measurable, achievable, realistic, and set to a timetable.

The draft Mediation Settlement Agreement probably will be reviewed and revised repeatedly by each Party and will continue to be edited, expanded, condensed, and rewritten as necessary until both Parties reach an acceptable settlement. Only after final agreement is reached on all its parts, and a final version memorialized in writing, will the Parties be asked to sign the Mediation Settlement Agreement to indicate their understanding of and agreement to the Mediation Settlement Agreement and their willingness to abide by its provisions.

The Parties' mutual execution of the Mediation Settlement Agreement resolves the dispute (or at least those aspects of the dispute addressed in the Mediation Settlement Agreement if they decided to set aside any specific issues for later proceedings). An executed Mediation Settlement Agreement is enforceable between the Parties in accordance with federal and state law.

# NERC

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

# Appendix 5A

## Organization Registration and Certification Manual

Effective Date: October 15, 2015

**RELIABILITY | ACCOUNTABILITY**



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# Table of Contents

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Section I — Executive Summary .....	1
Overview .....	1
To Whom Does This Document Apply? .....	1
When did These Processes Begin?.....	1
Where to Access and Submit Form(s)?.....	1
Service.....	2
Roles and Responsibilities.....	2
NERC.....	2
Regional Entity .....	2
Entity Submitting the Application .....	3
Section II — Introduction to Organization Registration and Organization Certification Processes.....	4
Organization Registration — Entities Required to Register.....	4
Organization Certification.....	4
Section III — Organization Registration Process .....	5
Purpose and Scope .....	5
Overview .....	5
Section IV — Organization Certification Process.....	15
Purpose and Scope .....	15
Overview .....	15
Organization Certification Process .....	15
Section V — NERC Organization Registration Appeals Process.....	20
Purpose and Scope .....	20
Overview .....	20
Organization Registration Appeals Procedure.....	20
Section VI — NERC Organization Certification Appeals Process .....	23
Purpose and Scope .....	23
Overview .....	23
Organization Certification Appeals Procedure .....	23
Definitions .....	26

# Section I — Executive Summary

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## Overview

The purpose of this document is twofold: (1) to define the process utilized in the Organization Registration Program for identifying which functional entities must register as owners, operators, and users of the Bulk Power System (BPS) for compliance with Reliability Standards; and (2) to define the process utilized in the Organization Certification Program for certifying the following entities: Reliability Coordinator (RC), Balancing Authority (BA), and Transmission Operator (TOP). The North American Electric Reliability Corporation (NERC) Compliance and Certification Committee (CCC) is responsible for approving and forwarding these processes to the NERC Board of Trustees (Board) for its approval. Where a proposal for revisions to these processes comes to the Board from sources other than the CCC, the Board will seek the concurrence of the CCC before taking action on the proposal.

## To Whom Does This Document Apply?

All industry participants responsible for or intending to be responsible for, the following functions must register with NERC through the Organization Registration process. The entities are defined in the NERC *Statement of Compliance Registry Criteria*, set forth in **Appendix 5B** to the NERC Rules of Procedure (ROP), with responsibilities designated by the individual Reliability Standards or by a sub-set list of the otherwise applicable Reliability Standards. Such sub-set list will specify the Reliability Standards and may specify Requirements/sub-Requirements by NERC, in which case the entity will be responsible for compliance with only such sub-set list, in accordance with **Appendix 5B** to the NERC ROP.

	Entities that Must Register	Entities that Need to be Certified
Reliability Coordinator (RC)	√	√
Transmission Operator (TOP)	√	√
Balancing Authority (BA)	√	√
Planning Authority (PA)	√	
Transmission Planner (TP)	√	
Transmission Service Provider (TSP)	√	
Transmission Owner (TO)	√	
Resource Planner (RP)	√	
Distribution Provider (DP)	√	
Generator Owner (GO)	√	
Generator Operator (GOP)	√	
Reserve Sharing Group (RSG)	√	

## When did These Processes Begin?

The initial Registration process began in January of 2006. Registration of new entities is an ongoing process. If a Registered Entity's information changes, these changes must be submitted to the applicable Regional Entity(s).

Certification is ongoing for new entities in accordance with Section IV of this manual.

## Where to Access and Submit Form(s)?

Registration and Certification forms are provided on each Regional Entity's website. Completed forms are to be sent electronically to the Compliance and Certification Manager of the applicable Regional Entity(s). It is desirable

that entities operate within a single Regional Entity Region; however, if an entity operates in more than one Region, separate Registration applications must be completed and submitted to each of the Regional Entities.

## Service

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.

## Roles and Responsibilities

The following is a high-level overview of the roles and responsibilities in the Registration and Certification processes:

### NERC

1. Oversight of entity processes performed by the Regional Entities, including:
  - a. Governance per the Regional Entity's delegation agreement with NERC.
  - b. Coordination of process execution when an entity is registering and/or certifying with multiple Regional Entities.
2. Manage each entity's NERC Compliance Registry identification number (NERC ID) including:
  - a. Sending a Registration or Certification letter that contains the NERC ID to the applicable Regional Entity(ies) for review and approval. If the Regional Entity(ies) agrees with all the information provided, it will notify NERC to issue the NERC ID to the Registered Entity and will send a copy of the notification being provided to the Regional Entity(ies).
  - b. Ensuring each Registered Entity has only one NERC ID for all Regional Entities in which registered.
3. Make modeling changes based on Registration information.
4. Maintain accurate Registration and Certification records including granting Certification certificates for the Registered Entity(ies) responsible for compliance (including Joint Registration Organization (JRO)/Coordinated Functional Registration (CFR)).
5. Maintain published up-to-date list of Registered Entities (i.e. the NERC Compliance Registry (NCR)) on the NERC website. NERC maintains the NCR, which identifies each Registered Entity and the applicable functional categories for which it is registered.
6. Lead panel reviews in accordance with **Appendix 5A, Organization Registration and Organization Certification Manual**, Section III.D and **Appendix 5B, Statement of Compliance Registry Criteria**.

### Regional Entity

1. Performs data collection and Mapping of BPS Facilities and those Facilities that have a material impact on the BPS within its Regional Entity defined reliability Region boundaries.
2. Approves or disapproves entity Registration applications.
3. Reviews entity Certification applications for completeness.
4. Notifies NERC of entities registered with the Regional Entity.
5. Approves or denies Certification Team (CT) recommendations and notifies the entity and NERC of the decision.

6. Provides leadership to the CT throughout the Certification process.

### **Entity Submitting the Application**

1. Completes and submits Registration and/or Certification application.
2. Submits updates to Registration and/or Certification information as necessary and/or requested.
3. Responds to Regional Entity and/or NERC questions pertaining to Registration and/or Certification.
4. Provides documentation or other evidence requested or required to verify compliance with Certification requirements.



## Section II — Introduction to Organization Registration and Organization Certification Processes

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The processes utilized to implement the Organization Registration and Organization Certification Programs are administered by each Regional Entity. Pursuant to its delegation agreement with NERC, each Regional Entity is responsible for registering and certifying industry participants within its Regional Entity reliability Region boundaries. Each Regional Entity must use the following NERC processes.

### Organization Registration — Entities Required to Register

All industry participants responsible for one or more of the functions below must register for each function through the Organization Registration Program. These entities are defined in the NERC *Statement of Compliance Registry Criteria*.

- RC
- TOP
- BA
- PA
- TP
- TSP
- TO
- RP
- DP
- GO
- GOP
- RSG

The Registration procedure is in Section III of this manual.

### Organization Certification

All Registered Entities registered in the NCR for the RC, TOP, and/or BA functions shall be certified. Certification requires the Registered Entity to start operation within 12 months of being NERC certified. This Certification process is described in Section IV of this manual.

## Section III — Organization Registration Process

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### Purpose and Scope

The purpose and scope of this process is to provide guidance on how a user, owner, and/or operator of the BPS should be registered in the NCR.

### Overview

Section 39.2 of the Commission's regulations, and Title 18 of the C.F.R. § 39.2, requires each owner, operator, and user of the BPS to be registered with NERC and to comply with approved Reliability Standards.

Owners, operators, and users of the BPS will be registered by function(s) and are:

1. Responsible for compliance with all applicable Requirements/sub-Requirements within Reliability Standards approved by Applicable Governmental Authorities, for the applicable functions for which the Registered Entity is registered, except to the extent that an entity is granted a sub-set list of applicable Reliability Standards, which specifies the Reliability Standards and may specify Requirements/sub-Requirements by NERC, in which case the entity will be responsible for compliance with only such sub-set list; and,
2. Subject to the compliance monitoring and enforcement requirements of Section 400 of the ROP.

See Figure 1A Organization Registration Process Overview.

#### A. Organization Registration Process

1. Applicable entities shall begin the Registration process by submitting a completed Registration application to the Regional Entity(ies) of the reliability Region(s) where the entity intends to perform its function(s) (Registration forms are provided on each Regional Entity's website).
  - a. At any time, an entity may recommend in writing, with supporting documentation, to the Regional Entity(ies) that an entity be added to or removed from the Compliance Registry.
  - b. The Registration process for an entity may also be initiated by a Regional Entity, NERC, or Applicable Governmental Authority.
  - c. With respect to: (i) entities to be registered for the first time; (ii) currently-registered entities or (iii) previously-registered entities, for which registration status changes are sought, including availability and composition of a sub-set list of applicable Reliability Standards (which specifies the Reliability Standards and may specify Requirements/sub-Requirements), the registration process steps in Section III of **Appendix 5A** apply.
  - d. At any time, an entity whose registration is at issue may request expedited treatment and waiver of applicable timelines. NERC, in its sole discretion, shall determine if such a request will be granted and alternative timelines. NERC's decision is not a final decision that is subject to appeal.
2. NERC shall coordinate Registration of entities that are required to register with multiple Regional Entities in order to ensure consistency of the Registration process.
3. For entities that are required to be certified, the applicable Regional Entity(ies) shall ensure that the Registration information provided is accurate for updating the NCR per items 4 through 12 below and notifies the entity to initiate the Certification process per Section IV of this manual.
4. Entities that have a NERC ID shall use it on the form.

- a. If an entity does not have a NERC ID, NERC shall assign one.
- b. An entity responsible for more than one function will use a single NERC ID.
5. Regional Entities shall evaluate the submitted information and determine if the information is complete/correct. If the information is not complete/correct, the entity will be notified to complete/correct or clarify the Registration information.
6. A single entity must register for all functions that it performs itself. In addition, that 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 all Requirements/sub-Requirements of Reliability Standards applicable to that function or those functions including reporting requirements.(ROP Section 507)
7. 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.(ROP Section 508)
8. In completing the Regional Entity responsibilities for the Registration process, the following are key items the Regional Entity must verify:
  - a. That Regional Entity registrations meet the geographical and electrical Registration boundaries requirements of the ROP Section 501(1.4).
  - b. The Registration submission includes all data requested by NERC that is necessary for accurately identifying and contacting the Registered Entity.
9. The Regional Entity shall forward all Registration information to NERC for inclusion of an entity on the NCR:
  - a. If the Registration determination involves (i) the materiality test set forth in the notes in **Appendix 5B, Statement of Compliance Registry Criteria**; (ii) a sub-set list of Reliability Standards (which specifies Requirements and may specify sub-Requirements);<sup>1</sup> or (iii) a dispute by an entity whose registration status is at issue regarding the Regional Entity's application of **Appendix 5B, Statement of Compliance Registry Criteria**, a NERC-led review panel will be convened in accordance with **Appendix 5A, Organization Registration and Organization Certification Manual**, Section III.D.
  - b. Within five business Days of a Registration determination by NERC or the NERC-led review panel, as applicable, NERC will forward the proposed additions or changes to the NCR to the Regional Entity for review and comment.
  - c. The Regional Entity has five business Days to respond to the proposed changes.
  - d. If NERC does not receive any comments, the NCR will be revised. If NERC does receive comments, NERC will work with the Regional Entity to the extent changes are needed to the NCR and will revise the NCR accordingly.
10. NERC updates the NCR and notifies the applicable Registered Entity(ies) within five business Days of the update.

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<sup>1</sup> If NERC has established clearly defined criteria for eligibility for a sub-set list of applicable Reliability Standards and has identified the sub-set list that may apply to similarly situated entities, such criteria shall govern the applicability of such sub-set list and such a matter shall not proceed to the NERC-led review panel, unless there is a dispute by the entity whose sub-set list treatment is at issue. (See, e.g., UFLS-Only DPs.)

11. The Registered Entity may appeal the final registration determination by NERC in accordance with the ROP Section 500 and Section V of **Appendix 5A**.
12. The NCR shall be dynamic and will be revised as necessary to take account of changing circumstances such as corrections, revisions, and or deletions. Per the Regional Entity’s delegation agreement, the Regional Entity will take any recommendation received under Section 1.a, and other applicable information, under advisement as it determines whether an entity should be on the NCR.
  - a. Each Registered Entity identified in the NCR shall notify its corresponding Regional Entity and/or NERC 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. (ROP Section 400).
  - b. Each Regional Entity has an independent obligation, even in the absence of a notification by a Registered Entity, to review and submit updates to the NCR to NERC, consistent with the procedures in this Section III, with appropriate notification to the affected entities, to the extent the Regional Entity is aware of, or possesses information that the NCR should be updated. These updates include, but are not limited to, conditions on which the sub-set list are no longer applicable, or where a new and emerging risk to reliability is identified that changes the basis upon which the entity was deactivated, deregistered, or upon which a sub-set list of requirements was made applicable, in addition to deactivation<sup>2</sup> of entities that no longer meet the applicable registration thresholds. This does not excuse the Registered Entity from its obligation to provide such required notifications.
13. Entities registered or subject to registration as a DP that qualify as Underfrequency Load Shedding (UFLS)-Only DPs shall submit Registration information to the Regional Entity. The UFLS-Only DP shall be subject only to the sub-set list of Reliability Standards identified in **Appendix 5B**. Within 50 Days of the entity’s submission of the Registration information to the Regional Entity, the Regional Entity shall issue a decision as to whether UFLS-Only DP treatment is appropriate. If the Regional Entity concludes that it is, then the Regional Entity shall forward the information to NERC and NERC will forward the proposed additions or changes to the NCR to the Regional Entity for review and comment. The Regional Entity has five business Days to respond to the proposed changes. If NERC does not receive any comments, the NCR will be revised. If NERC receives comments, NERC will work with the Regional Entity to the extent changes are needed to the NCR and will revise the NCR accordingly. NERC updates the NCR and notifies the applicable Registered Entity(ies) within five business Days of the update. If the entity whose registration is at issue does not agree with the Regional Entity’s decision regarding UFLS-Only DP treatment, the entity may, within 30 Days of issuance of the decision, seek review by the NERC-led review panel in **Appendix 5A**, *Organization Registration and Organization Certification Manual*, Section III.D. If the entity whose registration is at issue does not agree with the determination of the NERC-led review panel, the entity may file an appeal with the NERC Board Compliance Committee (BOTCC) in accordance with the provisions set forth in Section V of this **Appendix 5A**.
14. The Registered Entity may file a registration appeal with the NERC BOTCC in accordance with the provisions set forth in Section V of **Appendix 5A** if it does not agree with the determination of the NERC-led review panel.
15. NERC may extend the timelines for good cause shown. Requests should be sent to the Director of Compliance.<sup>3</sup> NERC shall notify the Registered Entity and the Regional Entity of such time extensions.

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<sup>2</sup> See Figure 1B: Deactivation Process Overview

<sup>3</sup> References to the term Director of Compliance in the NERC ROP should be read to include an equivalent position.

**B. Deactivation Process**

1. The term Deactivation refers to removal of an entity from the NCR for a specific functional category.
2. As a result of Deactivation, the entity is no longer subject to any prospective compliance obligations with respect to Reliability Standards applicable to that functional category.
3. If all functional categories have been deactivated for a given entity, such entity would be deregistered and removed from the NCR. However, the entity's compliance history will be retained. In its letter notifying the entity of its Deactivation or deregistration, as applicable, NERC will notify the entity of the required retention period, in accordance with the NERC ROP.
4. A Registered Entity may submit a request for Deactivation and supporting information to the Regional Entity at any time. Such information shall include:
  - a. Entity name and NCR ID number;
  - b. Functions for which Deactivation is requested; and
  - c. The basis on which Deactivation is requested, including supporting documentation, which may be limited to an attestation, if appropriate.
5. The Regional Entity shall request any additional information from the Registered Entity within 10 Days of receipt of the request for Deactivation.
6. The Registered Entity shall provide the additional information within 20 Days of its request for Deactivation.
7. The Regional Entity will issue a decision within 50 Days of the date of receipt of all requested information from the Registered Entity.
8. If the Regional Entity agrees with the request for Deactivation, it shall forward its Deactivation determination to NERC within five business Days of issuance of the decision.
9. If NERC accepts the Deactivation determination and the Registered Entity agrees with the determination, NERC will forward within five business Days of receipt of the Deactivation determination from the Regional Entity, the proposed additions or changes to the NCR to the Regional Entity for review and comment.
  - a. The Regional Entity has five business Days to respond to the proposed changes.
  - b. If NERC does not receive any comments, the NCR will be revised. If NERC receives comments, NERC will work with the Regional Entity to the extent changes are needed to the NCR and will revise the NCR accordingly.
10. If the Regional Entity or NERC does not agree with the request for Deactivation, the Registered Entity may seek review by the NERC-led review panel in **Appendix 5A, Organization Registration and Organization Certification Manual**, Section III.D.
11. If the Deactivation determination involves (i) the materiality test set forth in the notes in **Appendix 5B, Statement of Compliance Registry Criteria**; (ii) a determination that a sub-set list of Reliability Standards (which will specify Reliability Standards and may specify Requirements/sub-Requirements) should apply as an alternative to Deactivation;<sup>4</sup> or (iii) the Registered Entity disagrees with the Regional Entity determination, the determination will be submitted to the NERC-led review panel process in **Appendix**

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<sup>4</sup> If NERC has established clearly defined criteria for eligibility for a sub-set list of applicable Reliability Standards and has identified the sub-set list that may apply to similarly situated entities, such criteria shall govern the applicability of such sub-set list and such a matter shall not proceed to the NERC-led review panel, unless there is a dispute by the entity whose sub-set list treatment is at issue. (See, e.g., UFLS-Only DPs.)

**5A**, *Organization Registration and Organization Certification Manual*, Section III.D within 30 Days after issuance of the determination.

12. If the NERC-led review panel approves the request for Deactivation, NERC will forward within five business Days of the panel decision, the proposed additions or changes to the NCR to the Regional Entity for review and comment.
  - a. The Regional Entity has five business Days to respond to the proposed changes.
  - b. If NERC does not receive any comments, the NCR will be revised. If NERC receives comments, NERC will work with the Regional Entity to the extent changes are needed to the NCR and will revise the NCR accordingly.
13. The Registered Entity may file a registration appeal with the NERC BOTCC in accordance with the provisions set forth in Section V of **Appendix 5A** if it does not agree with the determination of the NERC-led review panel.
14. NERC may extend the timelines for good cause shown. Requests should be sent to the Director of Compliance. NERC shall notify the Registered Entity and the Regional Entity of such time extensions.

### C. Reactivation Process

1. NERC maintains the NCR, which identifies each Registered Entity and the applicable functional categories for which it is registered.
2. The term Reactivation refers to re-registration pursuant to the NERC ROP Section 500 and **Appendices 5A and 5B** of an entity to the NCR for a specific functional category or the revocation of, or additions to, a sub-set list of Reliability Standards (which specifies Reliability Standards and may specify Requirements/sub-Requirements) that has been granted to an entity. Reactivation may be initiated by NERC, a Regional Entity or an entity with respect to such entity's own functional categories or sub-set list of Reliability Standards (which specifies Reliability Standards and may specify Requirements/sub-Requirements).
3. Reactivation shall be governed by the procedures in the NERC ROP Section 500 and Section III.A and, as applicable, Section III.D of this **Appendix 5A**.
4. As a result of Reactivation, and consistent with the implementation plan to be developed pursuant to this paragraph, the entity shall prospectively comply with all Reliability Standards applicable to that functional category, or with the sub-set list specified in the Reactivation determination, unless otherwise notified. Within 30 days of a final Reactivation determination, the entity shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the Reactivation. The Regional Entity and Registered Entity shall confer to agree upon such schedule. If the Regional Entity and Registered Entity are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance of the disagreement, and shall provide statements of the Regional Entity's and the Registered Entity's positions, and NERC shall specify a reasonable implementation schedule.
5. The entity's prior compliance history will be retained and shall apply with respect to the Reactivation. In its letter notifying the entity of its Reactivation, NERC will notify the entity of its registration in accordance with the NERC ROP.
6. The Registered Entity may file a registration appeal with the NERC BOTCC in accordance with the provisions set forth in Section V of **Appendix 5A** if it does not agree with the determination of the NERC-led review panel.
7. NERC may extend the timelines for good cause shown. Requests should be sent to the Director of Compliance. NERC shall notify the Registered Entity and the Regional Entity of such time extensions.

#### D. NERC-led Review Panel

1. NERC shall establish a NERC-led, centralized review panel, comprised of a NERC lead with Regional Entity participants, to vet requests for Deactivation of, or decisions not to register, an entity that meets Sections I through IV of the Registry Criteria or requests to add an entity that does not meet (i.e., falls below) Sections I through IV of the Registry Criteria, as well as disputes regarding the application of Sections I through IV of the Registration Criteria and requests for a sub-set list of applicable Reliability Standards (which may specify the Requirements/sub-Requirements).
  - a. The NERC-led review panel will be comprised of a standing pool of individuals with relevant expertise from NERC and each of the Regional Entities. Individuals with relevant expertise shall be appointed by the Regional Entity senior executive (CEO, President, General Manager, etc.) and individuals with relevant expertise shall be appointed by the NERC senior executive (CEO, President, General Manager, etc.). NERC shall select the panel members for a given matter from the standing pool.
  - b. Panel members for a given matter shall comply with Subsection 7 of Section 403 of the NERC ROP, shall not be employed by the Regional Entity whose determination is being reviewed or have otherwise participated in the review of the registration matter, and shall have the required technical background to evaluate registration matters.
2. With respect to review of the application of the criteria contained in the Statement of Compliance Registry Criteria Sections I through IV, the burden of proof is on NERC and the Regional Entity to demonstrate that an entity meets the Registry Criteria for registration.
3. The burden of proof with respect to the materiality test, set forth in **Appendix 5B**, *Statement of Compliance Registry Criteria*, is on the entity making the request, i.e., the entity asking to be excluded from the NCR (despite satisfying the threshold criteria)<sup>5</sup> and the Regional Entity seeking to include an entity in the NCR (that does not satisfy the threshold criteria).
4. The burden of proof with respect to a determination as to whether an entity's compliance obligations should be limited to only a specified sub-set of otherwise applicable Reliability Standards is on the entity requesting such treatment, provided, however, that where NERC has established clearly defined criteria for eligibility for a sub-set of applicable Reliability Standards (which may specify Requirements/sub-Requirements) and has identified the sub-set list that may apply to similarly situated entities (e.g., UFLS-Only DPs), the burden of proof to demonstrate that an entity does not meet the criteria for such a sub-set list is on the Regional Entity and NERC.
5. The entity who bears the burden of proof with respect to application of the materiality test, or a sub-set list of applicable Reliability Standards (which may specify Requirements/sub-Requirements) must submit to NERC, in writing, details of the issues and identification of the Responding Entity,<sup>6</sup> and the applicable Regional Entity(ies), RC, BA, PA and TOP that have (or will have upon registration of the entity) the entity whose registration status is at issue within their respective Scope of Responsibility. NERC will send a

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<sup>5</sup> By way of example, the Registered Entity whose Deactivation request was denied by the Regional Entity bears the burden of proof (i.e., on materiality) and both requests panel review and makes the submissions required, under 6(a) and (c), unless the issue involves the Regional Entity's application of the threshold criteria. If the issue involves the Regional Entity's application of the threshold criteria, then the Regional Entity bears the burden of proof and makes the submissions required by sections 6(a) and (c), although it is the Registered Entity who makes the request for panel review.

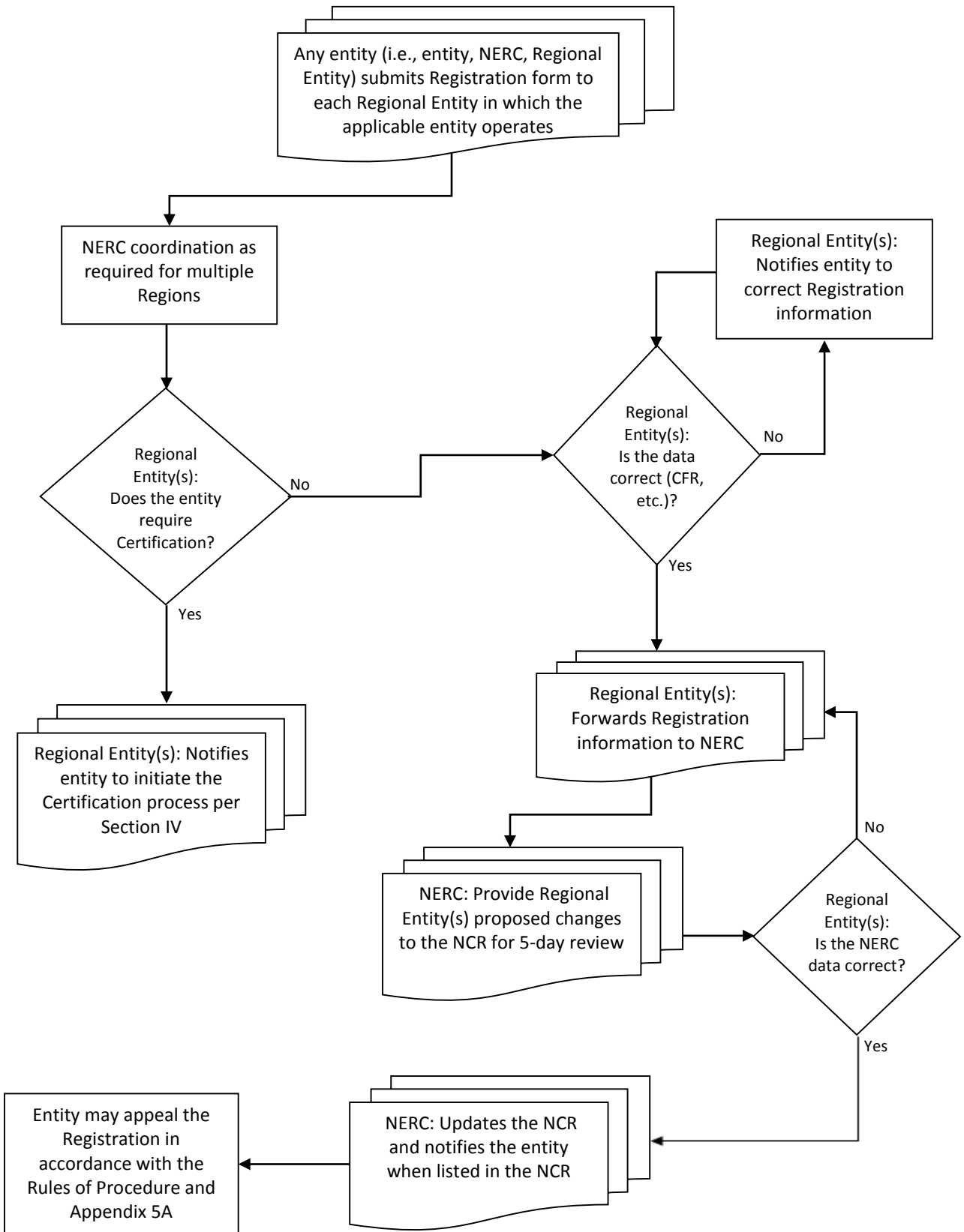
<sup>6</sup> By way of example, if a Registered Entity is seeking to be deactivated based on the materiality test and therefore bears the burden of proof, then the Responding Entity is the Regional Entity. If a Regional Entity bears the burden of proof in a materiality test case, then the entity whose registration status is at issue is the Responding Entity.

notification to the Regional Entity(ies), the entity whose registration status or sub-set list treatment is at issue, and the referenced RC, BA, PA and TOP acknowledging receipt of the notification of panel review.

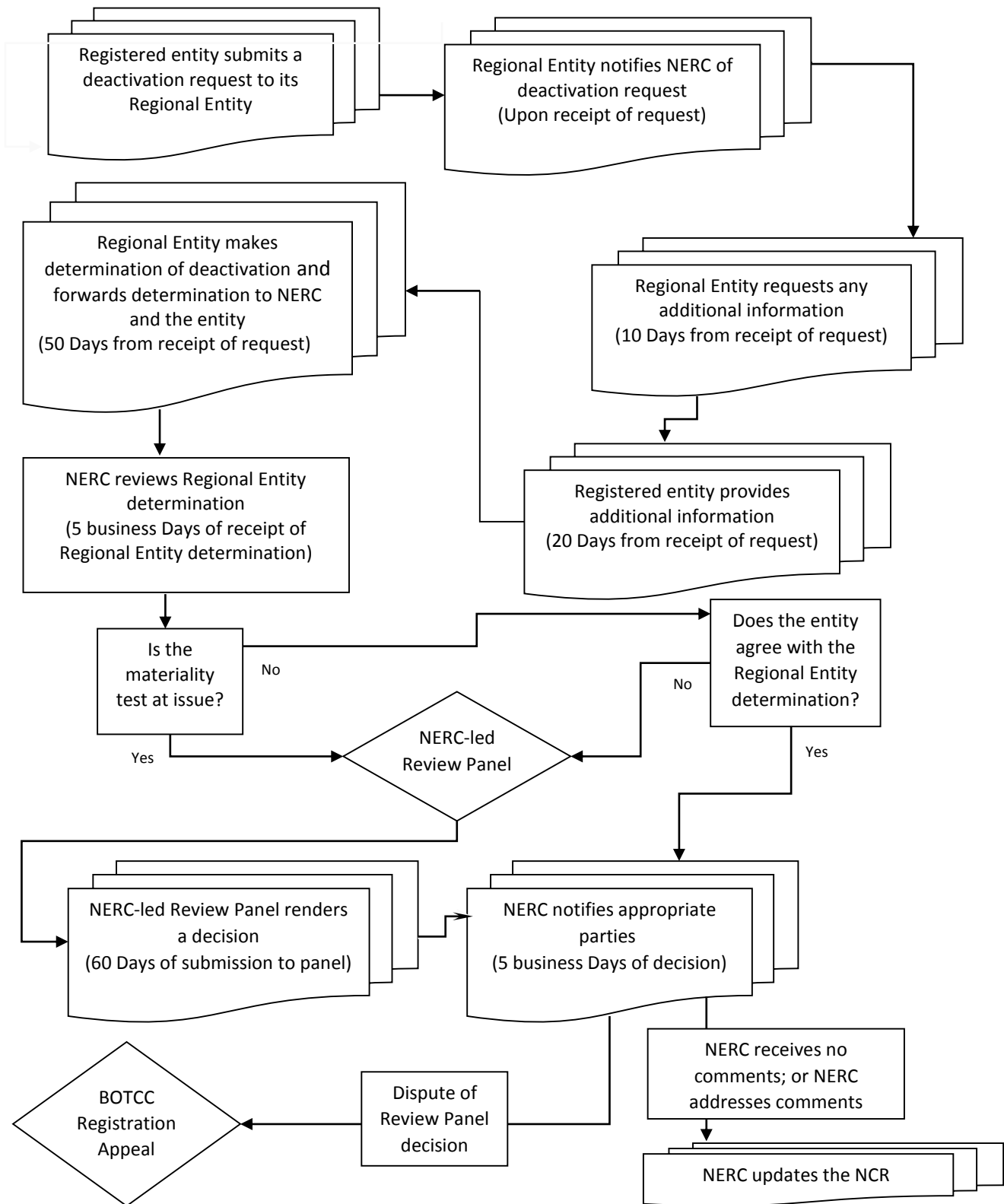
- a. To ensure there is no confusion with respect to the rights and responsibilities of a Registered Entity during the panel review process, the notification will confirm whether the Registered Entity will remain on the NCR and will be responsible for compliance with approved Reliability Standards applicable to the function under review.
6. The panel review process timelines with respect to application of the materiality test, or sub-set list treatment of applicable Reliability Standards (which may specify Requirements/sub-Requirements) are as follows:
- a. Within 10 Days of the date of the NERC-led review panel notification, the entity with the burden of proof will provide any additional data supporting its request to NERC (who will forward to the NERC-led review panel), the Responding Entity, the applicable Regional Entity(ies), and the RC, BA, PA and TOP that has (or will have upon registration of the entity) the entity whose registration status at issue within their respective Scope of Responsibility.
  - b. The Responding Entity will provide a copy of its assessment directly to all parties, as well as to NERC, within 20 Days of the date of the NERC panel review notification. If the RC, BA, PA and TOP provide an assessment, they must provide a copy to all parties, as well as NERC, within 20 Days of the date of the NERC panel review notification.
  - c. The entity with the burden of proof may submit a response to the Responding Entity assessment, and any assessment submitted by the RC, BA, PA and TOP, with copies to all parties and NERC, within 30 Days of the date of the NERC panel review notification.
  - d. The standard of proof in any proceeding under these procedures shall be by a preponderance of the evidence.
  - e. The NERC-led review panel will render its decision within 60 Days of the final submission to the panel.
7. With respect to threshold disputes regarding application of Sections I through IV of **Appendix 5B**, *Statement of Compliance Registry Criteria*, the entity whose registration status is at issue must submit to NERC, in writing, details of the issues and identification of the applicable Regional Entity(ies), RC, BA, PA and TOP that have (or will have upon registration of the entity) the entity whose registration status is at issue within their respective Scope of Responsibility, NERC will send a notification to the Regional Entity(ies), the entity whose registration status is at issue, and the referenced RC, BA, PA and TOP acknowledging receipt of the notification of panel review.
- a. To ensure there is no confusion with respect to the rights and responsibilities of a Registered Entity during the panel review process, the notification will confirm whether the Registered Entity will remain on the NCR and will be responsible for compliance with approved Reliability Standards applicable to the function under review.
8. The panel review process timelines for threshold disputes regarding application off Sections I through IV of **Appendix 5B**, *Statement of Compliance Registry Criteria* are as follows:
- a. The entity whose registration status is at issue will provide NERC (who will forward to the NERC-led review panel), the applicable Regional Entity(ies), and the RC, BA, PA and TOP that has (or will have upon registration of the entity) the entity whose registration status at issue within their respective Scope of Responsibility, any additional data supporting its request within 10 Days of the date of the NERC panel review notification. In such a case, the Regional Entity has the burden of proof on application of the threshold criteria.
  - b. The Regional Entity will provide a copy of its assessment directly to all parties, as well as to NERC, within 20 Days of the date of the NERC panel review notification. If the RC, BA, PA and TOP provide



- an assessment, they must provide a copy to all parties, as well as NERC, within 20 Days of the date of the NERC panel review notification.
- c. The entity whose registration status is at issue may submit a response to the Regional Entity assessment, and any assessment submitted by the RC, BA, PA and TOP, with copies to all parties and NERC, within 30 Days of the date of the NERC panel review notification.
  - d. The standard of proof in any proceeding under these procedures shall be by a preponderance of the evidence.
  - e. The NERC-led review panel will render its decision within 60 Days of the final submission to the panel.
9. In reaching a decision, the NERC-led review panel will apply the materiality test and other criteria and notes, as applicable, set forth in **Appendix 5B, *Statement of Compliance Registry Criteria***. The NERC-led review panel shall also include a review of individual and aggregate system-wide risks to, and considerations of, reliability of the BPS, as well as the BES Definition, as applicable.
  10. NERC may extend the timelines for good cause shown. Requests should be sent to the Director of Compliance. NERC shall notify the entity whose registration status or sub-set list treatment is at issue and the Regional Entity of such time extensions, as well as the RC, BA, PA and TOP, of such time extensions.
  11. Once a decision is made, it will be issued to the entity whose registration status or sub-set list treatment is at issue, the Regional Entity and the referenced RC, BA, PA and TOP. The decision (including its basis) will be posted on the NERC website, with confidential information redacted in accordance with Section 1500 of the NERC ROP.
  12. NERC will forward within five business Days the proposed additions or changes to the NCR to the Regional Entity for review and comment.
    - a. The Regional Entity has 5 business Days to respond to the proposed changes.
    - b. If NERC does not receive any comments, the NCR will be revised. If NERC receives comments, NERC will work with the Regional Entity to the extent changes are needed to the NCR and will revise the NCR accordingly.
  13. The BOTCC will resolve appeals of registration disputes in accordance with NERC ROP Section 500 and **Appendix 5A, *Organization Registration and Organization Certification Manual***, Section V.



**Figure 1A: Organization Registration Process Overview**



**Figure 1B: Deactivation Process Overview**

## Section IV — Organization Certification Process

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### Purpose and Scope

The purpose and scope of this process is to provide guidance for completing the Certification of a new entity that will become NERC certified and registered as an RC, TOP, or BA.

### Overview

See Figure 2 *Organization Certification Process Overview* for an overview of the Certification process.

### Organization Certification Process

1. Certification:
  - a. An entity in a single Regional Entity reliability Region shall initiate the Certification process by completing a Certification application (Certification applications are provided on each Regional Entity’s website) and sending it to the Regional Entity which will manage the Certification process.
  - b. An entity in multiple Regional Entity reliability Regions shall initiate the Certification process by completing a Certification application (Certification applications are provided on each Regional Entity’s website) and sending it to the Regional Entities in those reliability Regions. Each Regional Entity will inform NERC of the request. The Regional Entities will determine which Regional Entity will provide the leadership to manage the Certification process.
  - c. Provisional Certification Process - All RCs, BAs, and/or TOPs that were already registered and operating on June 18, 2007 become “NERC Certified” upon completion of (1) a NERC readiness evaluation (on site activities completed by the evaluation team); and (2) a CMEP Compliance Audit (on site activities completed by the Compliance Audit team) after June 18, 2007. Recertification on a periodic basis of these Registered Entities will not be required. Demonstration of ongoing satisfactory performance of applicable RC, BA, and TOP functional Requirements shall be accomplished by completion of a CMEP Compliance Audit every three years per the requirements of the NERC ROP.
2. For an entity that is not required to be certified, the Regional Entity(ies) shall reject the application and notify the entity that Certification is not required.
3. If the application is not complete or accurate, the Regional Entity will notify the entity to revise the application as needed. When the application is deemed complete and accurate, it will be accepted. The entity and the Regional Entity shall agree to a timeline including specific milestones for the Certification process.
4. The decision to certify changes to an already operating and certified Registered Entity is a collaborative decision between the affected Regional Entity(s) and NERC. NERC has the final authority regarding this decision. Items to consider for this decision include one or more of the following:
  - a. Changes to a Registered Entity’s Footprint or operational challenges (i.e., TLRs) due to the changes
  - b. Organizational restructuring that could impact the BPS reliability
  - c. Relocation of the control center
  - d. Changes to Registered Entity ownership requiring major operating procedure changes
  - e. Significant changes to JRO/CFR assignments or agreements changes
  - f. Addition or removal of member JRO/CFR utilities or entities

- g. Complete replacement of a Supervisory, Control and Data Acquisition (SCADA)/Energy Management System (EMS) system
5. The Certification process shall be completed within nine months of the date of acceptance of the application unless agreed to by all parties involved in the process and approved by NERC.
  6. The Regional Entity(ies) shall notify NERC that the Certification process has begun to enable NERC to carry out its roles and responsibilities.
  7. The Regional Entity will send a questionnaire with a submission deadline and a statement of expectations to all entities participating in the Certification process. These questionnaires and other related documents are located on the NERC website. The Regional Entity shall distribute questionnaires and other related documents to the following entities, as required:
    - a. Entity seeking Certification.
    - b. Participating BAs, RCs, and TOPs in Footprints in which the entity intends to operate or with which the entity intends to interconnect transmission Facilities.
    - c. Participating TOs, TSPs, PAs, GOs, GOPs, TPs, DPs, and/or other applicable entities.
  8. The Regional Entity shall assemble a CT that will be responsible for performing the activities included in the Certification process.
    - a. The CT members shall adhere to NERC’s confidentiality agreements for any data or information made available to the CT member through the Certification process. Team members shall not be employees of or have a direct financial interest in the entity or any of its affiliates.
    - b. The Regional Entity, with concurrence of NERC, may increase or decrease the distribution of the questionnaires and other related documents based upon the complexity of the Certification.
    - c. If the entity objects to any member of the CT, the entity must make that known, in writing, to the Regional Entity listing the reasons for the objection. The Regional Entity will either replace the team member or respond with written justification for keeping the member on the team.
    - d. CT composition
      - i. The BA CT shall consist of representatives from an existing BA, the entity’s proposed RC, TOP, each affected Regional Entity, and NERC.
      - ii. The RC CT shall consist of representatives from an existing RC, a BA and a TOP in the proposed RC Area, each affected Regional Entity, and NERC.
      - iii. The TOP CT shall consist of representatives from an existing TOP, the entity’s proposed RC, each affected Regional Entity, and NERC.
      - iv. Additional CT members with expertise in the any of the NERC Compliance Registry functional areas can be added as necessary.
      - v. Additional CT members from NERC or Regional Entity staff may be added as necessary.
      - vi. Entities such as government representatives or other stakeholders may be observers in the Certification process.
  9. Each CT member must complete the NERC auditor training prior to participation.
  10. The CT will review the entity’s submitted documentation and address any issues prior to the site visit.
  11. The CT shall inform the entity before the on-site visit of any documentation or clarification that is necessary to support the questionnaires.

12. The entity shall identify to the CT prior to the on-site visit all Reliability Standards or Requirements/sub-Requirements which have been delegated to another entity.
  - a. The CT will review the entity(ies) ability to perform those delegated Requirements/sub-Requirements or Reliability Standards.
13. The CT shall conduct at least one on-site visit to the entity's Facilities. At a minimum, the team will:
  - a. Review with the entity the data collected through the questionnaires, and such data that is available only onsite;
  - b. Interview the operations and management personnel;
  - c. Inspect the Facilities and equipment associated with the applicable Reliability Standards referenced in the questionnaire;
  - d. Request demonstration of all tools identified in the Certification process;
  - e. Review documents and data including agreements, processes, and procedures identified in the Certification process;
  - f. Verify operating personnel NERC Certification documents and proposed work schedules; and,
  - g. Review any additional documentation resulting from inquiries arising during the site-visit.
14. The entity, in conjunction with the CT, shall attempt to resolve any deficiencies prior to issuance of the draft report.
15. The draft report is provided to the entity for review for 14 Days and any resulting comments will be assessed by the CT for possible inclusion in the report.
16. The Regional Entity(ies) may grant a time extension, not to exceed 180 Days, to the entity to allow the entity to resolve any open Certification issues.
17. The CT shall provide a Certification recommendation and identification of audit deficiencies in the final written report. All members of the CT shall have an equal voice in the Certification recommendation. This allows for a minority opinion if the review team cannot reach a consensus. The final written Certification report is distributed to NERC, the entity, and the other affected Regional Entities, as applicable.
18. The following is the format for the final report:
  - Title page
  - Table of Contents
  - Introduction – A brief discussion on the Regional Entity(ies) involved, the entity being certified, a description of the function the entity(ies) are being certified for, and a brief timeline of the Certification project.
  - CT – Provide the CT makeup.
  - Objective and Scope – Discussion on entity application (who, what, when, & how).
  - Overall Conclusion – Recommendation being made by the CT.
  - CT Findings – Any item(s) needing to be closed prior to operation that do not hinder the CT from making a recommendation.
  - Positive Observations.
  - Company History – Discussion on the applicant's company history.

- Company Details – Specific details regarding why the entity is being certified and its relationship with other entities (BAs, RCs, and TOPs etc.).
- Documentation List – Provide a list of critical documentation reviewed by the CT used to make the CT’s conclusion and the documentation retention requirements.
- Attachments – Describe those attachments that are for public viewing and those that are separated from the report due to confidentiality issues such as Critical Infrastructure documentation.

19. Certification recommendation and approval.

- a. If the entity intends to operate in a single Regional Entity’s reliability Region, the CT shall make a Certification recommendation to that Regional Entity. The Regional Entity shall approve or disapprove the recommendation. The Regional Entity shall notify the entity and NERC of the Certification decision.
- b. If the entity intends to operate in multiple Regional Entities, the CT shall make a Certification recommendation to all applicable Regional Entities in a single report. Certification recommendation by the Regional Entities must be unanimous. The Regional Entities shall notify the entity and NERC of the Certification decision.
- c. NERC shall approve or disapprove all final Certification recommendations and notify the entity of the decision.

20. The entity may appeal the decision in accordance with the NERC ROP and Section VI of this manual.

21. If the entity is approved for Certification, NERC shall provide the entity a Certification letter and a NERC certificate indicating that that entity is NERC certified as a BA, RC, and/or TOP as applicable.

- a. For those CFR entities that agree upon a division of compliance responsibilities for one or more Reliability Standards or Requirements/sub-Requirements, NERC shall provide all entities responsible for BA, RC and/or TOP Requirements/sub-Requirements and approved for Certification as BA, RC and/or TOP a NERC certificate indicating that those entities are NERC certified as a BA, RC, and/or TOP.
- b. NERC shall update the Compliance Registry prior to the entity(s) going operational.

22. After the entity has been awarded Certification, the Regional Entity(ies) shall notify all applicable entities as to the date that the entity may begin its operation as a certified entity. The entity must commence operation within 12 months of Certification. Failure to begin operation within the 12-month period shall require the entity to reapply for Certification.

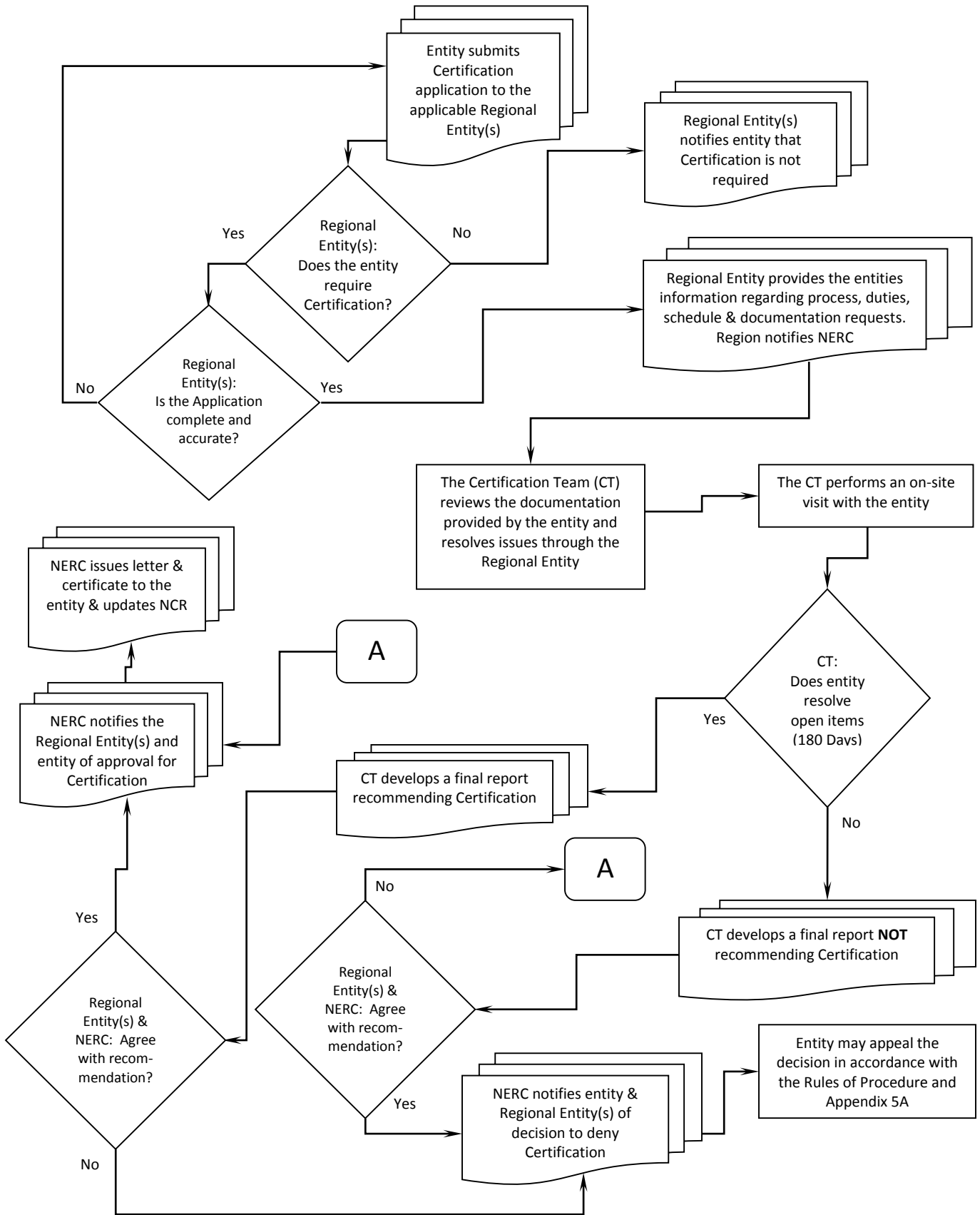


Figure 2: Organization Certification Process Overview



## Section V — NERC Organization Registration Appeals Process

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### Purpose and Scope

This section describes the process that any organization must use to seek review of its listing and functional assignment on the NCR.

### Overview

NERC has established documented procedures to ensure a fair and impartial appeals process. No one with a direct interest in a dispute may participate in the appeals process except as a party or witness. See Figure 3, *Organization Registration Appeals Process Overview*.

### Organization Registration Appeals Procedure

1. Any Registered Entity included on the NCR may challenge final decisions regarding its listing, functional assignments, and determinations regarding the applicability of a sub-set of Reliability Standards (which specifies the specific Reliability Standards and may specify Requirements/sub-Requirements).
2. All registration appeals must be filed in writing to NERC, via registered mail. Appeals are sent to:  
Compliance Operations  
3353 Peachtree Road NE  
Suite 600, North Tower  
Atlanta, GA 30326  
Main: (404) 446-2560  
Facsimile: (404) 446-2595
3. Each party in the appeals process shall pay its own expenses for each step in the process.
4. A stipulation of invoking the appeals process is that the Regional Entity or Registered Entity requesting the appeal agrees that NERC (its Members, Board, committees, subcommittees, and staff), any person assisting in the appeals process, and any company employing a person assisting in the appeals process, shall not be liable for, and 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 appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.
5. Parties retain the right to seek further review of a decision in whatever regulatory agency or court that may have jurisdiction.
6. All appeals must be received within 21 Days of receipt of the NERC determination that is being appealed. The appeal must state why the Registered Entity believes it should not be registered or should be deactivated based on the NERC ROP and the *NERC Statement of Compliance Registry Criteria* or why its compliance obligations should be limited only to a sub-set list of otherwise applicable Reliability Standards (which specifies the Reliability Standards and may specify Requirements/sub-Requirements). A copy of the appeal must be concurrently served on the Regional Entity.

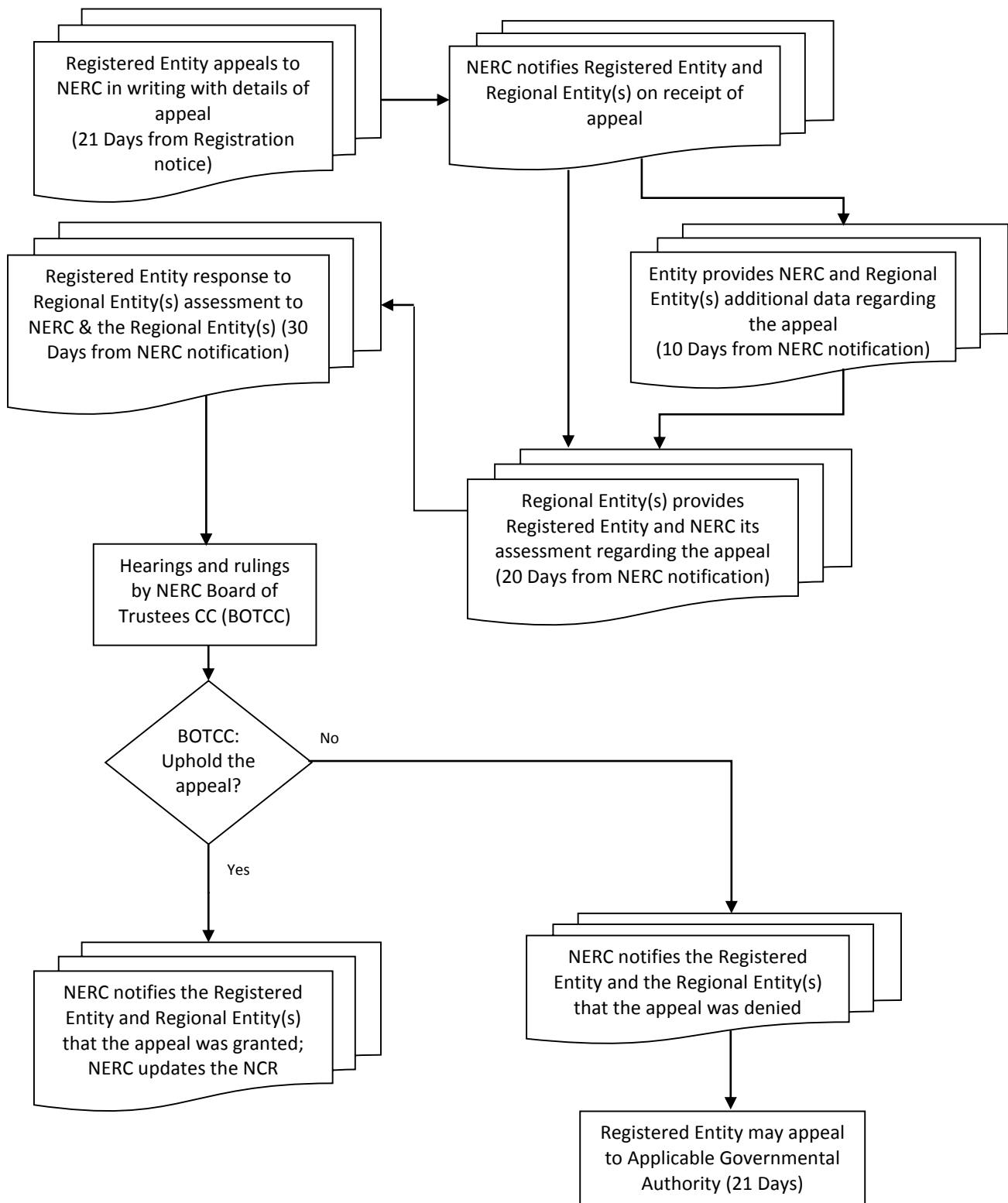
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## Section V — NERC Organization Registration Appeals Process

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7. After receipt of the appeal, the Registered Entity has a 30 day period to work with the Regional Entity to resolve the appeal, if possible. If the appeal is resolved, the Regional Entity will notify NERC with the details of the resolution and NERC will close the appeal.
8. At any time through this appeals process, a Registered Entity may agree with the decision and/or agree to close the appeal. NERC shall notify the involved parties and the NERC BOTCC that the appeal is resolved and update the NCR as applicable.
9. NERC will notify the Registered Entity and the applicable Regional Entity(ies) regarding the appeal with the following expectations:
  - a. The Registered Entity will provide NERC and the applicable Regional Entity(ies) any additional data supporting its appeal within 10 Days of the date of the NERC appeal notification.
  - b. The applicable Regional Entity(ies) will provide a copy of its assessment directly to the Registered Entity, as well as to NERC, within 20 Days of the date of the NERC appeal notification.
  - c. The Registered Entity may submit a response to the Regional Entity(ies) assessment, with copies to the Regional Entity(ies) and NERC, within 30 Days of the date of the NERC appeal notification.
  - d. To ensure there is no confusion with respect to the rights and responsibilities of the Registered Entity during the appeal process, the notification will confirm whether the Registered Entity will remain on the NERC Compliance Registry and will be responsible for compliance with approved Reliability Standards applicable to the function under appeal during the appeal.
  - e. NERC may extend the timelines for good cause shown. Requests should be sent to the Director of Compliance. NERC shall notify the Registered Entity and the Regional Entity of such time extensions.
10. Hearing and Ruling by the BOTCC
  - a. The BOTCC will resolve Registration disputes.
  - b. The BOTCC may request additional data from NERC, the relevant Regional Entity(ies) or the Registered Entity, and prescribe the timeframe for the submitting the requested data.
  - c. The BOTCC will provide a written decision regarding any appeals, along with the basis for its decision.
  - d. If the BOTCC upholds the appeal, NERC will:
    - Notify the Registered Entity and Regional Entity(ies) that the appeal was granted.
    - Update the NCR.
  - e. If the BOTCC does not uphold the appeal, NERC will:
    - Notify the Registered Entity and the Regional Entity(ies) that the appeal was denied.
    - The Registered Entity may appeal to Federal Energy Regulatory Commission (FERC) or another Applicable Governmental Authority within 21 Days of the notification of the decision.
  - f. A record of the appeals process shall be maintained by NERC. Confidentiality of the record of the appeal will be based on the NERC ROP Section 1500.

**Section V — NERC Organization Registration Appeals Process**



**Figure 3: Organization Registration Appeals Process Overview**

## Section VI — NERC Organization Certification Appeals Process

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### Purpose and Scope

This section describes the process for an organization to appeal the Certification decision that was determined in the Certification process.

### Overview

The NERC Organization Certification Program provides a key means to fulfill NERC's mission. In conducting this program, NERC has established documented procedures to ensure a fair and impartial appeals process. No one with a direct interest in a dispute may participate in the appeals process except as a party or witness. See Figure 4 *Organization Certification Appeals Process Overview*.

### Organization Certification Appeals Procedure

1. Appeal for an Organization Certification Finding.
2. Any entity can appeal an organization Certification decision issued as a result of the Certification process.
3. Requirements and Conditions for Appeals.
  - a. For all appeals under the NERC Organization Certification Program, the appeals process begins when an entity notifies the NERC Vice President and Director of Compliance, in writing, that it wishes to use the NERC appeals process.
    - The Director of Compliance is the main contact for all parties in all steps of the appeals process.
    - If an appeal is not filed within 21 Days of the date that the Certification report or finding is issued, or the final Regional Entity appeals process ruling is made, the finding shall be considered final and un-appealable.
  - b. Each party in the appeals process shall pay its own expenses for each step in the process.
  - c. A stipulation of invoking the appeals process is that the Regional Entity or entity requesting the appeal agrees that NERC (its Members, Board, committees, subcommittees, and staff), any person assisting in the appeals process, and any company employing a person assisting in the appeals process, shall not be liable, and 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 appeals proceeding. This "hold harmless" clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.
  - d. Parties retain the right to seek further review of a decision in whatever regulatory agency or court that may have jurisdiction.
4. At any time through this appeals process, an entity may withdraw its appeal.
5. Hearing and Ruling by the Compliance and Certification Committee.
  - a. Within 28 Days of receiving notice from the NERC Director of Compliance, the CCC will conduct a hearing where all the parties or representatives of the disputing parties will present the issue in question, in accordance with CCC procedure CCCPP-005, *Hearing Procedures for Use in Appeals of Certification Matters*, which is incorporated in **Appendix 4E** of the ROP.
  - b. If the appeal is upheld, NERC notifies the entity and Regional Entity(s), updates the NCR, and issues any appropriate letter and certificate to the entity.
  - c. If the appeal is denied, NERC notifies the entity and Regional Entity(s).

6. Hearings and Ruling by the BOTCC.
  - a. The BOTCC will be asked to resolve a dispute related to the NERC Organization Certification Program if any party to the appeal contests the CCC final order.
  - b. The BOTCC may request additional data from NERC, Regional Entity(s) or the entity and prescribe the timeframe for the submitting the requested data.
  - c. At the next regularly scheduled BOTCC meeting, or at a special meeting if the Board determines it is necessary, the Chairman of the CCC will present a summary of the dispute and the actions taken to the BOTCC.
    - Each party will have an opportunity to state its case.
    - The BOTCC will then rule on the dispute.
  - d. If the BOTCC upholds the appeal, NERC will:
    - Notify the entity and the Regional Entity(ies) that the appeal was upheld.
    - Update the NCR.
    - Issue a Certification letter and a certificate to the entity as applicable.
  - e. If the BOTCC does not uphold the appeal, NERC will notify the entity and the Regional Entity(ies) that the appeal was denied.
    - The entity may appeal to Applicable Governmental Authorities within 21 Days of the issuance of the decision.
  - f. A record of the appeals process shall be maintained by NERC and available upon request. Confidentiality of the record of the appeal will be based on the NERC ROP Section 1500.

Section VI — NERC Organization Certification Appeals Process

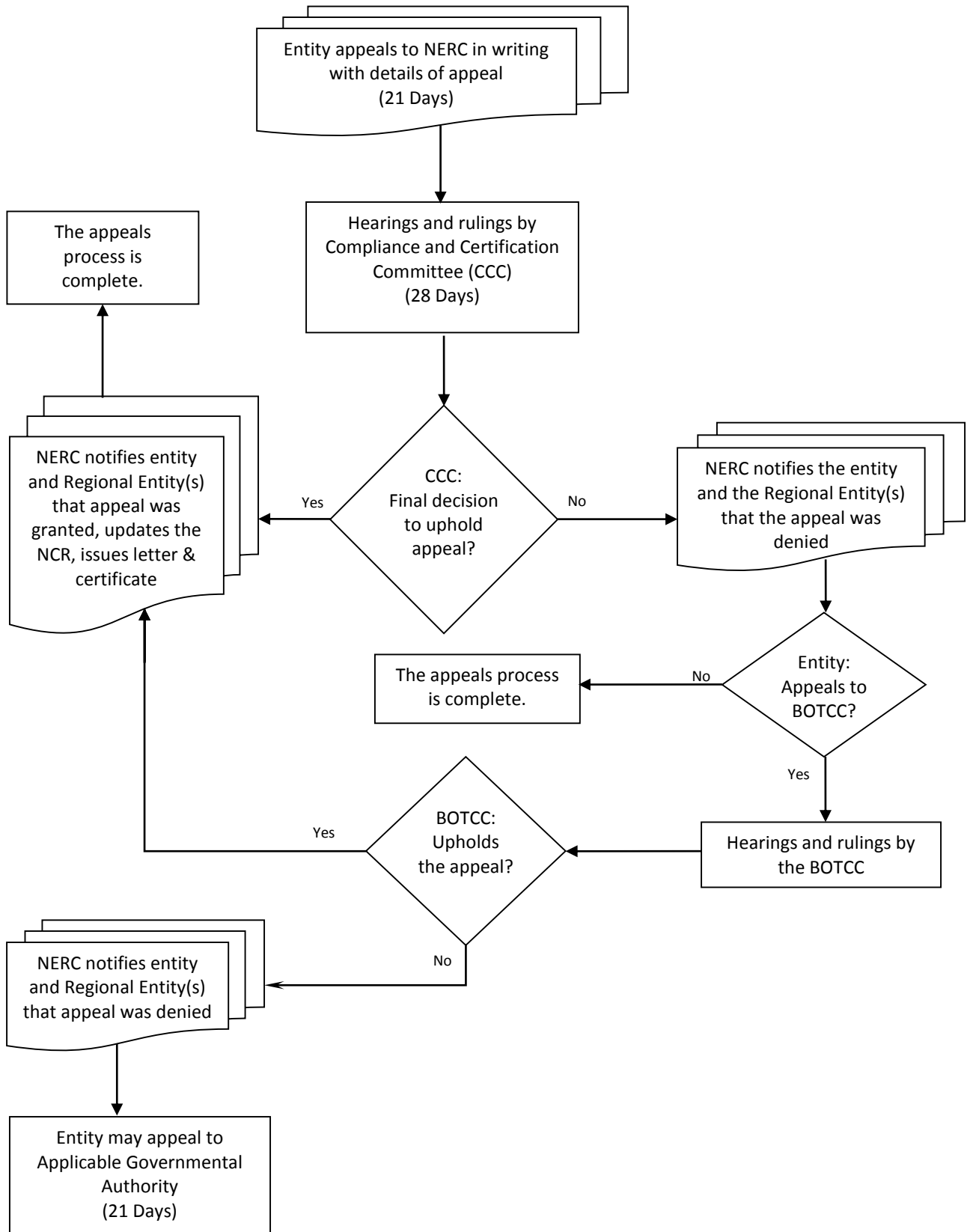


Figure 4: Organization Certification Appeals Process Overview

## Definitions

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Capitalized terms used in this Appendix shall have the definitions set forth in Appendix 2 of the ROP. For convenience of reference, definitions used in this Appendix are also set forth below:

<b>NERC Organization Certification</b>	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.
<b>Compliance and Certification Manager</b>	The individual/individuals within the Regional Entity that is/are responsible for monitoring compliance of entities with applicable NERC Reliability Standards.
<b>Days</b>	Days as used in the Registration and Certification processes are defined as calendar days.
<b>Footprint</b>	The geographical or electric area served by an entity.
<b>Functional Entity</b>	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.
<b>Mapping</b>	The process of determining whether a Regional Entity's Footprint is being served by Registered Entities.
<b>NERC Identification Number (NERC ID)</b>	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.
<b>Regional Entity</b>	An entity having enforcement authority pursuant to 18 C.F.R. § 39.8.
<b>Registration</b>	Processes undertaken by NERC and Regional Entities to identify which entities are responsible for reliability functions within the Regional Entity's Region.
<b>Coordinated Functional Registration (CFR)</b>	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).

## Appendix 5B

# Statement of Compliance Registry Criteria

Revision 5.2

Effective: October 15, 2015



## Statement of Compliance Registry Criteria (Revision 5.2)

### Summary

This document describes how the North American Electric Reliability Corporation (NERC) will identify organizations that may be candidates for Registration and assign them to the Compliance Registry.

NERC and the Regional Entities<sup>1</sup> 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.

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 (BPS), 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 BPS 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 BPS who have a material impact<sup>2</sup> on the BPS 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 impact on the BPS 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 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 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.

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<sup>1</sup> The term "Regional Entities" includes Cross-Border Regional Entities, that have footprints in the U.S., Canada and Mexico, as applicable. Applicable Governmental Authorities in Canadian jurisdictions may have adopted their own Rules of Procedure and Compliance Registry requirements. Registered Entities may be subject to the Compliance Monitoring and Enforcement Programs (CMEP) in their respective jurisdictions, in accordance with applicable laws and regulations.

<sup>2</sup> 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 (or an equivalent position) that an organization be added to or removed from the Compliance Registry, pursuant to NERC Rules of Procedure Section 501.1.3.5.

Entities responsible for funding NERC and the Regional Entities have been identified in the budget documents filed with FERC.<sup>3</sup> 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 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, taking into account the following considerations:

- As of July 20, 2006, NERC was certified as the Electric Reliability Organization (ERO) created for the U.S. by the Energy Policy Act of 2005 (EPAAct) and FERC Order No. 672. NERC has received similar recognition by Canadian authorities in their respective jurisdictions.
- FERC Order No. 672 directs that owners, operators and users of the BPS in the U.S. 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, in accordance with applicable laws, regulations and orders of Applicable Governmental Authorities.
- 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, NERC's Organization Registration program<sup>4</sup> is the means by which NERC and the Regional Entities plan, manage and execute Reliability Standard compliance oversight of owners, operators, and users of the BPS.
- 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 BPS.

NERC wishes to identify those entities that may need to be listed in its Compliance Registry. Identifying these organizations is necessary and prudent for the purpose of determining resource needs, both at the

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<sup>3</sup> Budget documents are submitted to Applicable Governmental Authorities in Canada for information.

<sup>4</sup> See NERC ERO Application; Exhibit C; Section 500 – Organization Registration and Certification.

NERC and Regional Entity level, and for communicating with these entities regarding their potential responsibilities and obligations. NERC and the Regional Entities believe that candidate entities can be identified at any time, as and when needed. The Compliance Registry is available on NERC's website.

### **Resolution**

The potential costs and effort of registering every organization potentially within the scope of "owner, operator, and user of the BPS," while ignoring their impact upon reliability, would be disproportionate to the improvement in reliability that would reasonably be anticipated from doing so.

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 BPS 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 BPS.

In order to promote consistency, NERC and the Regional Entities 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 BPS 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 Compliance Registry 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. Rules pertaining to joint Registration and Joint Registration Organizations, as well as Coordinated Functional Registrations, are now found in Sections 501, 507 and 508 of the NERC Rules of Procedure.

- I. Entities that use, own or operate Elements of the Bulk Electric System (BES) as established by NERC's approved definition of BES below are (i) owners, operators, and users of the BPS 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 by application of Exclusion E1 or E3.
- ***I2*** - Generating resource(s) including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above with:
  - a) Gross individual nameplate rating greater than 20 MVA. Or,
  - b) Gross plant/facility aggregate nameplate rating greater than 75 MVA.
- ***I3*** - Blackstart Resources identified in the Transmission Operator's restoration plan.
- ***I4*** - Dispersed power producing resources that aggregate to a total capacity greater than 75 MVA (gross nameplate rating), and that are connected through a system designed primarily for delivering such capacity to a common point of connection at a voltage of 100 kV or above. Thus, the facilities designated as BES are:
  - a) The individual resources, and
  - b) The system designed primarily for delivering capacity from the point where those resources aggregate to a greater than 75 MVA to a common point of connection 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 unless excluded by application of Exclusion E4.

***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 Inclusions I2, I3, or I4, 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 Inclusions I2, I3 or I4, with an aggregate capacity of non-retail generation less than or equal to 75 MVA (gross nameplate rating).

*Note 1 – A normally open switching device between radial systems, as depicted on prints or one-line diagrams for example, does not affect this exclusion.*

*Note 2 – The presence of a contiguous loop operated at a voltage level of 50 kV or less, between configurations being considered as radial systems, 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 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 customers 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 Inclusions I2, I3, or I4 and do not have an aggregate capacity of non-retail generation greater than 75 MVA (gross nameplate rating);*
  - b) *Real 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 any part 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 installed for the sole benefit of a retail customer(s).*

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

II. Entities identified in Section 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:<sup>5</sup>

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

<sup>5</sup> Exclusion: An 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, including bilateral agreements and Sections 501, 507 and 508 of the NERC Rules of Procedure.

Function Type	Acronym	Definition/Discussion
		Balancing Authority Area, and supports Interconnection frequency in real-time.
Distribution Provider	DP	<p>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.</p> <p>Note: As provided in Section III.b.1 and Note 5 below, a Distribution Provider entity shall be an Underfrequency Load Shedding (UFLS)-Only Distribution Provider if it is the responsible entity that owns, controls or operates UFLS Protection System(s) needed to implement a required UFLS program designed for the protection of the BES, but does not meet any of the other registration criteria for a Distribution Provider.</p>
Generator Operator	GOP	The entity that operates generating Facility(ies)and performs the functions of supplying energy and Interconnected Operations Services.
Generator Owner	GO	Entity that owns and maintains generating Facility(ies).
Planning Authority/ Planning Coordinator	PA/PC	The responsible entity that coordinates and integrates transmission Facilities and service plans, resource plans, and Protection Systems.
Reliability Coordinator	RC	The entity that is the highest level of authority who is responsible for the Reliable Operation of the BES, has the Wide Area view of the BES, 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.

Function Type	Acronym	Definition/Discussion
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.
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. Except as provided in Section V and the Notes to the Criteria below, entities identified in Section II above as being subject to Registration as a Distribution Provider should be included in the Compliance Registry for these functions only if they meet any of the criteria listed below:

III(a) Distribution Provider:

III.a.1 Distribution Provider system serving >75 MW of peak Load that is directly connected to the BES;<sup>6</sup> or

<sup>6</sup> Ownership, control or operation of UFLS Protection System(s) needed to implement a required UFLS Program designed for the protection of the BES does not affect an entity’s eligibility for registration pursuant to III.a.1.

- III.a.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 BES:<sup>7</sup>
- a required Undervoltage Load Shedding (UVLS) program and/or
  - a required Special Protection System or Remedial Action Scheme and/or
  - a required transmission Protection System; or
- III.a.3 Distribution Provider that is responsible for providing services related to Nuclear Plant Interface Requirements (NPIRs) pursuant to an executed agreement; or
- III.a.4 Distribution Provider with field switching personnel identified as performing unique tasks associated with the Transmission Operator’s restoration plan that are outside of their normal tasks.
- III(b) Distribution Provider with UFLS-Only assets (referred to as “UFLS-Only Distribution Provider”)
- III.b.1 UFLS-Only Distribution Provider does not meet any of the other registration criteria in Sections III(a)(1)-(4) for a Distribution Provider; and
- III.b.2 UFLS-Only Distribution Provider is the responsible entity that owns, controls, or operates UFLS Protection System(s) needed to implement a required UFLS Program designed for the protection of the BES.

*The Reliability Standards applicable to UFLS-Only Distribution Providers are: (1) PRC-005,<sup>8</sup> PRC-006-1, PRC-006-2 and (2) any regional Reliability Standard whose purpose is to develop or establish a UFLS Program [PRC-006-NPCC-1 and PRC-006-SERC-01]. Reliability Standards that apply to Distribution Providers will not apply to UFLS-Only Distribution Providers, unless explicitly stated in the applicability section of these Reliability Standards and in future revisions and/or versions.*

IV. Joint Registration Organization, Coordinated Functional Registration 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, as well as Coordinated Functional Registrations, are now found in Section 501, 507 and 508 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.

<sup>7</sup> As used in Section III.a.2, “protection of the Bulk Electric System” means protection to prevent instability, Cascading, or uncontrolled separation of the BES and not for local voltage issues (UVLS) or local line loading management (Special Protection System) that are demonstrated to be contained within a local area.

<sup>8</sup> Four versions of PRC-005 are currently in various stages of Commission approval and standard development. For the period that each is in effect, PRC-005-2(ii), PRC-005-3(i), PRC-005-3(ii), PRC-005-4, PRC-005-5, and PRC-005-6 will apply to an entity included on the NCR as a UFLS-Only Distribution Provider during that period.



## Notes to the Registry Criteria in Sections I-V

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 demonstrate<sup>9</sup> that the organization is a BES owner, or operates, or uses BES assets, and is material to the reliability of the BES. 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 BES owner, operator, or user does not have a material impact on the reliability of the BES. Such decisions must be made in accordance with Section V of Appendix 5A to the NERC Rules of Procedure. In order to ensure a consistent approach to assessing materiality, a non-exclusive set of factors (“materiality test”) for consideration is identified below; however, only a sub-set of these factors may be applicable to particular functional registration categories:
  - a. Is the entity specifically identified in the emergency operation plans and/or restoration plans of an associated Reliability Coordinator, Balancing Authority, Generator Operator or Transmission Operator?
  - b. Will intentional or inadvertent removal of an Element owned or operated by the entity, or a common mode failure of two Elements as identified in the Reliability Standards (for example, loss of two Elements as a result of a breaker failure), lead to a reliability issue on another entity’s system (such as a neighboring entity’s Element exceeding an applicable rating, or loss of non-consequential load due to a single contingency). Conversely, will such contingencies on a neighboring entity’s system result in Reliability Standards issues on the system of the entity in question?
  - c. Can the normal operation, misoperation or malicious use of the entity’s cyber assets cause a detrimental impact (e.g., by limiting the operational alternatives) on the operational reliability of an associated Balancing Authority, Generator Operator or Transmission Operator?
  - d. Can the normal operation, Misoperation or malicious use of the entity’s Protection Systems (including UFLS, UVLS, Special Protection System, Remedial Action Schemes and other Protection Systems protecting BES Facilities) cause an adverse impact on the operational reliability of any associated Balancing Authority, Generator Operator or Transmission Operator, or the automatic load shedding programs of a PC or TP (UFLS, UVLS)?
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.

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<sup>9</sup> The reasonableness of any such demonstration will be subject to review and remand by NERC itself, or by any Applicable Governmental Authority, as applicable.

4. If an entity is part of a class of entities excluded based on any of the criteria above as individually being unlikely to have a material impact on the reliability of the BES, 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, in accordance with laws, regulations and orders of an Applicable Governmental Authority.
5. NERC may limit the compliance obligations of a given entity registered for a particular function or similarly situated class of entities, as warranted based on the particular facts and circumstances, to a sub-set list of Reliability Standards (which may specify Requirements/sub-Requirements).

**APPENDIX 5C**

**PROCEDURE FOR REQUESTING AND RECEIVING**

**AN EXCEPTION FROM THE APPLICATION**

**OF THE**

**NERC DEFINITION OF BULK ELECTRIC SYSTEM**

**Effective: July 1, 2014**

# Table of Contents

<b>1.0</b>	<b>INTRODUCTION.....</b>	<b>1</b>
1.1.	Purpose.....	1
1.2.	Authority.....	2
1.3	Canadian and Mexican Entities and Cross-Border Regional Entities .....	2
<b>2.0.</b>	<b>DEFINITIONS .....</b>	<b>2</b>
<b>3.0.</b>	<b>BASIS FOR APPROVAL OF AN EXCEPTION .....</b>	<b>5</b>
3.1.	Grounds for an Exception .....	5
3.2.	Burden.....	5
<b>4.0.</b>	<b>FORM, CONTENTS, AND SUBMISSION OF AN EXCEPTION REQUEST.....</b>	<b>5</b>
4.1.	Eligible Submitters of an Exception Request.....	5
4.2.	Separate Submissions for Each Exception Request .....	6
4.3.	Withdrawal of an Exception Request.....	7
4.5.	Required Information to be Included in the Exception Request .....	7
4.6	Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information Included in Required Information.....	9
<b>5.0</b>	<b>REVIEW, ACCEPTANCE OR REJECTION, AND RECOMMENDATION REGARDING EXCEPTION REQUESTS .....</b>	<b>10</b>
5.1.	Initial Screening of Exception Request for Acceptance or Rejection .....	11
5.2	Substantive Review of Exception Request for Approval or Disapproval .....	13
5.3	Technical Review Panel.....	14
<b>6.0</b>	<b>SUPPLEMENTATION OF AN EXCEPTION REQUEST PRIOR TO A RECOMMENDATION.....</b>	<b>14</b>
<b>7.0</b>	<b>APPEAL OF REJECTION OF AN EXCEPTION REQUEST.....</b>	<b>14</b>
<b>8.0</b>	<b>APPROVAL OR DISAPPROVAL OF AN EXCEPTION REQUEST.....</b>	<b>15</b>
<b>9.0</b>	<b>CHALLENGES TO APPROVAL OR DISAPPROVAL OF EXCEPTION REQUESTS.....</b>	<b>16</b>
<b>10.0</b>	<b>IMPLEMENTATION PERIOD FOR EXCEPTIONS.....</b>	<b>16</b>
10.1	Inclusion Exceptions .....	16
10.2	Denials of Exception Requests for Exclusion .....	16
<b>11.0</b>	<b>TERMINATION OF AN APPROVED EXCEPTION .....</b>	<b>17</b>

## 1.0 INTRODUCTION

### 1.1 Purpose

The NERC definition of the Bulk Electric System uses specific terms and thresholds that, in most cases, should appropriately identify Elements and groups of Elements that are appropriately classified as part of the Bulk Electric System. Conversely, the BES Definition should, in most cases, exclude Elements that are not part of the Bulk Electric System. In certain cases, however, the BES Definition may classify certain Elements as part of the Bulk Electric System that are not necessary for the Reliable Operation of the interconnected bulk-power transmission system or the BES Definition may classify certain Elements as non-Bulk Electric System that are necessary for the Reliable Operation of the interconnected bulk-power transmission system.

This Appendix to the Rules of Procedure of the North American Electric Reliability Corporation provides the procedure by which an entity may request and receive an Exception which will have the effect of either including within the BES an Element or Elements that would otherwise be excluded by application of the BES Definition or excluding from the BES an Element or Elements that would otherwise be included by application of the BES Definition. This Appendix is intended to implement authorization granted by FERC to allow such Exceptions from the BES Definition.<sup>1</sup>

An entity must request and obtain an Exclusion Exception pursuant to an Exception Request under this Exception Procedure before any Element that is included in the BES by application of the BES Definition shall be excluded from the BES. Likewise, an entity must request and obtain an Inclusion Exception pursuant to an Exception Request under this Exception Procedure before any Element that is excluded from the BES by application of the BES Definition shall be included in the BES.

During the pendency of an Exception Request, the status of an Element(s) that is the subject of an Exception Request shall remain as it is determined based on application of the BES Definition. This status will continue until all appeals to all Applicable Governmental Authorities are completed. An entity that is planning a connection of a new Element for which it believes an Exception would be appropriate may request an Exception prior to commercial operation of the Element.

The Owner of the Element to which the Exception Request applies or, with respect to an Element owned by another Registered Entity, any Regional Entity, Planning Authority (“PA”), Reliability Coordinator (“RC”), Transmission Operator (“TOP”), Transmission Planner (“TP”) or Balancing Authority (“BA”) that has (or will have upon inclusion of the Elements in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may submit an Exception Request for the Element as provided in this Exception Procedure.

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<sup>1</sup> *Revision to Electric Reliability Organization Definition of Bulk Electric System*, 133 FERC ¶ 61,150 (“Order No. 743”) (2010), *Order on Reh’g, Revision to Electric Reliability Organization Definition of Bulk Electric System*, 134 FERC ¶61,210 (“Order No. 743-A”) (2011).

## 1.2. Authority

This Appendix is a NERC Rule of Procedure and an Electric Reliability Organization Rule. This Appendix has been approved by (i) the NERC Board of Trustees and (ii) FERC. Any future revisions to this Appendix must be adopted in accordance with Article XI, section 2 of the NERC *Bylaws* and Section 1400 of the NERC *Rules of Procedure*, including approval by the NERC Board of Trustees and by FERC, in order to become effective. This Exception Procedure or an equivalent procedure is to be implemented in Canada and Mexico consistent with their respective laws and agreements.

## 1.3 Canadian and Mexican Entities and Cross-Border Regional Entities

A Registered Entity that is a Canadian Entity or a Mexican Entity seeking an Exception will be expected to work with the Regional Entity, NERC, and Applicable Governmental Authorities in Canada or Mexico, as appropriate, consistent with their respective laws and agreements, and without being obligated to authorize the disclosure of information prohibited by applicable federal, state or provincial law from disclosure to FERC or other governmental authorities in the U.S., in order to implement this Exception Procedure or an equivalent procedure. A Canadian Entity or a Mexican Entity shall not be required to subject itself to United States federal or state laws not otherwise applicable to the entity in order to utilize this Exception Procedure or an equivalent procedure.

## 2.0. DEFINITIONS

For purposes of this Appendix, capitalized terms shall have the definitions set forth in Appendix 2 to the Rules of Procedure. For ease of reference, the definitions of the following terms that are used in this Appendix are also set forth below.

**2.1 Acceptance of the Exception Request (or Acceptance):** The determination that an eligible Exception Request (i.e., an Exception Request permitted by section 4.1) contains all the Required Information so that it can undergo substantive review.

**2.2 Approval of the Exception Request (or Approval):** The determination by NERC that an Exception Request meets the criteria to receive the requested Exception.

**2.3 BES:** Bulk Electric System.

**2.4 BES Definition:** The NERC definition of the Bulk Electric System as set forth in the NERC *Glossary of Terms Used in Reliability Standards*.

**2.5 Canadian Entity:** A Registered Entity that is organized under Canadian federal or provincial law.

**2.6 Classified National Security Information:** 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 or Mexican federal or provincial law.

**2.7 Disapproval of the Exception Request (or Disapproval):** The determination by NERC that an Exception Request does not meet the criteria to receive the requested Exception.

**2.8 Eligible Reviewer:** 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.

**2.9 Exception:** Either an Inclusion Exception or an Exclusion Exception.

**2.10 Exception Procedure:** The procedure set forth in this Appendix.

**2.11 Exception Request:** A request made by a Submitting Entity in accordance with this Appendix for an Exception.

**2.12 Exception Request Form:** 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.

**2.13 Exclusion Exception:** A determination that an Element that falls within the BES Definition should be excluded from the BES.

**2.14 FERC:** The United States Federal Energy Regulatory Commission.

**2.15 FOIA:** The U.S. Freedom of Information Act, 5 U.S.C. §552.

**2.16 Inclusion Exception:** A determination that an Element that falls outside the BES Definition should be included in the BES.

**2.17 Lead Entity:** The entity that submits Exception Request information that is common to a group of Submitting Entities that are submitting Exception Requests jointly.

**2.18 Mexican Entity:** A Registered Entity that is organized under Mexican law.

**2.19 NRC:** The United States Nuclear Regulatory Commission.

**2.20 NRC Safeguards Information:** 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 or Mexican federal or provincial law.

**2.21 Owner:** 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.

**2.22 Protected FOIA Information:** 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 or Mexican federal or provincial law, which would be lost were the Required Information to be placed into the public domain.

**2.23 Recommendation:** The report to NERC containing the evaluation prepared in accordance with section 5.2 concerning whether or to what extent an Exception Request should be approved.

**2.24 Rejection of the Exception Request (or Rejection):** The determination that an Exception Request is not an eligible Exception Request (i.e., an Exception Request permitted by section 4.1) or does not contain all the Required Information in accordance with section 4.5 in order to be reviewed for substance.

**2.25 Required Information:** Information required to be provided in an Exception Request, as specified in section 4.0.

**2.26 Scope of Responsibility:** The registered functions of a PA, RC, TOP, TP or BA and the geographical or electric region in which the PA, RC, TOP, TP or BA operates to perform its registered functions, or with respect to a Regional Entity, its Regional Entity Region.

**2.27 Section I Required Information:** Required Information that is to be provided in Section I of a Submitting Entity's Exception Request.

**2.28 Section II Required Information:** Required Information that is to be provided in Section II of a Submitting Entity's Exception Request.

**2.29 Section III Required Information:** Required Information that is to be provided in Section III of a Submitting Entity's Exception Request.

**2.30 Submitting Entity:** The entity that submits an Exception Request in accordance with section 4.0.

**2.31 Technical Review Panel:** A panel established pursuant to section 5.3 of this Appendix.



### **3.0. BASIS FOR APPROVAL OF AN EXCEPTION**

#### **3.1. Grounds for an Exception**

##### (a) Exclusion Exception

An entity may request and obtain Approval from NERC for an Exclusion Exception on the grounds that the Element(s) for which the Exception Request is filed is included within the BES based on application of the BES Definition but is not necessary for the Reliable Operation of the interconnected bulk-power transmission system as evidenced by Required Information provided pursuant to **Detailed Information to Support an Exception Request** (Section III.B of the Exception Request Form).

##### (b) Inclusion Exception

An entity may request and obtain Approval from NERC for an Inclusion Exception on the grounds that the Element(s) for which the Exception Request is filed is not included within the BES based on application of the BES Definition but is necessary for the Reliable Operation of the interconnected bulk-power transmission system as evidenced by Required Information provided pursuant to **Detailed Information to Support an Exception Request** (Section III.B of the Exception Request Form).

#### **3.2. Burden**

The burden to provide a sufficient basis for Approval of an Exception Request in accordance with the provisions of this Exception Procedure is on the Submitting Entity. It is the responsibility of the Regional Entity, subject to oversight by NERC as provided in this Exception Procedure, to evaluate the request and make a Recommendation to NERC regarding its Approval. All evidence provided as part of an Exception Request or response will be considered in determining whether an Exception Request shall be approved or disapproved.

### **4.0. FORM, CONTENTS, AND SUBMISSION OF AN EXCEPTION REQUEST**

#### **4.1. Eligible Submitting Entities**

The Owner of an Element may submit an Exception Request for either an Inclusion Exception or an Exclusion Exception regarding that Element. A Regional Entity, PA, RC, TOP, TP, or BA that has (or will have upon inclusion in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may submit an Exception Request for the inclusion in the BES of an Element or Elements owned by a Registered Entity, provided that before doing so, (i) the Submitting Entity conferred with the Owner about the reasons for an Exception, and (ii) could not reach agreement regarding the submission of such an Exception Request. (If the Owner agrees with submitting an Exception Request, the Owner should be the Submitting Entity.) Only a Regional Entity may submit an Exception Request for the inclusion in the BES of an Element or Elements owned by an Owner that is not a Registered Entity. Only an

Owner or a Regional Entity may submit an Exception Request for the exclusion from the BES of an Element.

When a Regional Entity requests an Exception, the Regional Entity shall be the Submitting Entity and shall prepare and submit copies of its Exception Request (or portions thereof) to all applicable entities in accordance to this section 4.0.

With respect to an Element that crosses a boundary between Regional Entities, (1) the Submitting Entity will submit the Exception Request to both (or all) Regional Entities, which will cooperate to process the Exception Request pursuant to section 5.1 below, or (2) the Regional Entities must jointly submit an Exception Request to NERC (neither Regional Entity shall be allowed to submit such Exception Request unilaterally).

#### **4.2. Separate Submissions for Each Exception Request**

A separate Exception Request shall be submitted for each Element or set of connected Elements for which the Submitting Entity seeks an Exception. The scope of an Exception Request shall cover the terminal connections of the Element or set of Elements as identified in the Exception Request. Where the Submitting Entity seeks Exceptions from the BES Definition for multiple, similar Elements (either at the same location or at different locations within the geographic boundaries of a Regional Entity) on the same basis, the Exception Requests for all such Elements may be included in one Exception Request with all such Elements or sets of connected Elements separately identified. A single Exception Request may not be submitted for separate Elements within the geographic boundaries of more than one Regional Entity.

Multiple Submitting Entities may jointly file Exception Requests for similar Elements for which they are requesting Exceptions on the same basis. In such a situation, the Submitting Entities will submit a package comprised of a complete Exception Request Form for a Lead Entity, and an Exception Request Form for each other Submitting Entity that (1) provides the Submitting Entity's differing individual information to the extent such is required (e.g., contact information, identification, and location of Element(s), etc.), and (2) otherwise references the pertinent portions of the complete Exception Request Form filed by the Lead Entity (e.g., status under application of the BES Definition, basis for an Exception under section 3.1, etc.). For any Exception Request filed by multiple Submitting Entities as provided in this section, the Lead Entity shall be considered the "Submitting Entity" for purposes of the Regional Entity's and NERC's notices and actions in accordance with the remainder of this Exception Procedure. However, any Owner nonetheless may take any action otherwise appropriate for a Submitting Entity (e.g., respond to a Recommendation, submit an appeal, etc.).

#### **4.3. Withdrawal of an Exception Request**

A Submitting Entity may withdraw an Exception Request at any time prior to NERC Approval or Disapproval of the Exception Request.

#### **4.4. Form and Format of Exception Request**

An Exception Request shall consist of three sections, all of which must be submitted to the applicable Regional Entity. If the Submitting Entity is not the Owner [i.e., is a Regional Entity, PA, RC, TOP, TP, or BA that has (or will have upon inclusion of the Element in the BES) the Elements covered by an Exception Request within its Scope of Responsibility], it shall at the same time provide a copy of the Exception Request to the Owner (or if the Owner is unknown, to the operator of the Element(s)) to which the Exception Request applies.

#### **4.5. Required Information to be Included in the Exception Request**

**4.5.1.** Section I of an Exception Request shall contain the Required Information specified in this section 4.5.1. At the same time the Submitting Entity submits the Exception Request Form to the Regional Entity, the Submitting Entity shall submit a copy of Section I to each PA, RC, TOP, TP, and BA that has (or will have upon inclusion in the BES) the Elements covered by an Exception Request within its Scope of Responsibility. Failure to provide all Section I Required Information may result in Rejection of the Exception Request as incomplete.

1. Name and address of Submitting Entity.
2. Submitting Entity NERC Compliance Registry ID (if yet assigned).
3. Name of the Owner, if different than the Submitting Entity,
4. Owner's NERC Compliance Registry ID (if yet assigned).
5. Exception Request submittal date.
6. Whether the Exception Request is an original Exception Request or an amended Exception Request; and if it is an amended Exception Request, the identification number(s) of the original Exception Request and any previous amendments.
7. Whether the Exception Request is being submitted in conjunction with Exception Requests by other Submitting Entities. If so, the names of the other Submitting Entities.
8. Whether the Submitting Entity is filing a similar Exception Request(s) with one or more other Regional Entities, and if yes, the name(s) of the other Regional Entity(ies).
9. The type(s) of Element(s) for which the Exception is being requested.
10. Status, based on application of the BES Definition, of the Element(s) for which the Exception is being requested.

**4.5.2.** Section II of an Exception Request shall contain the Required Information specified in this section 4.5.2. At the same time the Submitting Entity submits the Exception Request Form to the Regional Entity, the Submitting Entity shall submit a copy of Section II to each PA, RC, TOP, TP, and BA that has (or will have upon inclusion of the Element(s) in the BES) the Elements covered by an Exception Request within its Scope of Responsibility. Failure to provide all Section II Required Information may result in Rejection of the Exception Request as incomplete.

Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing the Exception Request.

1. Identification and location(s) of Element(s) for which the Exception is being requested.
2. Name, title, phone number, facsimile number, and E-mail address of the Submitting Entity's technical contact person for the Exception Request.
3. Certification by the Submitting Entity (if other than Owner) that it conferred with the Owner regarding the reason for the requested Exception, but could not reach agreement regarding the submission of an Exception Request.
4. To the extent known by the Submitting Entity, name, mailing address, phone number, facsimile number, and E-mail address of the Owner's technical contact person for the Exception Request, if the Owner is different from the Submitting Entity.
5. Identification of PA, RC, TOP, TP, and BA that has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility, and certification by the Submitting Entity that it has sent copies of Sections I and II to each such entity.
6. A statement of the basis on which the Submitting Entity contends the Exception Request should be approved, and if the Submitting Entity is not the Owner, a statement of the basis of the Submitting Entity's reason for submitting the Exception Request.
7. A statement, signed and dated by an authorized representative of the Submitting Entity's senior management stating that the representative has read the Exception Request on behalf of the Submitting Entity and that the Submitting Entity believes Approval of the Exception Request is warranted.

**4.5.3** Section III of an Exception Request shall contain the **Detailed Information to Support an Exception Request** as specified on the Exception Request Form. Failure to include all Section III Required Information may result in Rejection of the Exception Request. The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information.

1. If the Exception Request is supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, and/or Protected FOIA Information, Section III shall include a statement identifying which of these categories each such item of information falls into and explaining why each such item of information is Classified National Security Information, NRC Safeguards Information, and/or Protected FOIA Information.
2. If the Submitting Entity is prohibited by law from disclosing any Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in section 4.1 of Executive Order No. 12958, as amended), Section III shall identify the Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information that is subject to such restrictions on disclosure and shall identify the criteria which a person must meet in order to be an Eligible Reviewer of the Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information.

**4.5.4** The Owner of the Element(s) to which the Exception Request applies, if different than the Submitting Entity, may file a response to supplement, correct or disagree with all or any part of an Exception Request. Any PA, RC, TOP, TP, and BA that has (or will have upon inclusion of the Element(s) in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may also provide input to the Regional Entity regarding the Exception Request. If in order to evaluate an Exception Request, the Owner, PA, RC, TOP, TP or BA wishes to obtain any Required Information in Section III of the Exception Request, the Owner, PA, RC, TOP, TP or BA may submit to the Regional Entity that received the Exception Request a request stating its reason for wanting to review such information, and the Regional Entity may provide such information to the Owner, PA, RC, TOP, TP or BA if the Regional Entity believes such review may assist the Regional Entity's review; if any of such Section III Required Information has been designated Confidential Information, prior to being provided the Confidential Information, the Owner, PA, RC, TOP, TP or BA shall execute a confidentiality agreement in a form established by the Regional Entity. Any response provided pursuant to this section 4.5.4 must be submitted to the Regional Entity with copies to the Submitting Entity and the Owner, if different from the Submitting Entity, within forty-five (45) days after the date the Exception Request Form was submitted to the Regional Entity.

#### **4.6 Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information Included in Required Information**

**4.6.1.** Upon reasonable advance notice from a Regional Entity, and subject to section 4.6.2, a Submitting Entity or Owner must provide the Regional Entity (a) with access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information included in the Exception Request, and (b) with

access for purposes of making a physical review and inspection of the Element or Elements for which an Exception Request has been submitted.

**4.6.2.** If the Submitting Entity or Owner is prohibited by law from disclosing any Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in section 4.1 of Executive Order No. 12958, as amended), then such Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information shall only be reviewed by a representative or representatives of the Regional Entity which may include contractors, who are Eligible Reviewers.

**4.6.3.** The Regional Entity, as applicable, will work cooperatively with the Submitting Entity and/or Owner to provide necessary levels of protection for information identified in Section 1500 of the NERC Rules of Procedure and to access Protected FOIA Information in a way that does not waive or extinguish the exemption of the Protected FOIA Information from disclosure. If the Regional Entity shares any Confidential Information with a third party it shall do so subject to restrictions in applicable law under appropriate confidentiality agreements.

## **5.0 REVIEW, ACCEPTANCE OR REJECTION, AND RECOMMENDATION REGARDING EXCEPTION REQUESTS**

The Regional Entity's evaluation of the Exception Request will consist of two stages:

- (a) During the first stage, the Regional Entity shall conduct an initial screening to determine whether to accept or reject the Exception Request; and
- (b) During the second stage, the Regional Entity shall conduct a substantive review to determine its Recommendation to NERC as to whether or not the Exception Request should be approved.

If the Regional Entity determines at any time that for a specified period of time, the Regional Entity will be unable to complete initial screenings of Exception Requests within the time provided by section 5.1.3(a) and/or substantive reviews of Exception Requests within the time provided in section 5.2.2, the Regional Entity, based on consultation with NERC, shall establish an alternative time period objective and work plan for completing initial screenings and substantive reviews of Exception Requests during the specified period of time. The alternative time period and work plan shall be publicized by posting on the Regional Entity's website.

When a Regional Entity is the Submitting Entity of an Exception Request, it nonetheless shall process such Request in accordance with this section 5.0, with the following exceptions:

- i. There will be no initial screening, Acceptance, or Rejection, and therefore sections 5.1.3 through 5.1.6 will not apply;

- ii. No later than sixty (60) days after the submission of the Exception Request to the Owner and other applicable entities, the Regional Entity shall commence its substantive review of the Exception Request (and of any responses received from the Owner and other applicable entities) in accordance with section 5.2 and shall complete such substantive review within six (6) months; and
- iii. Before the Regional Entity issues a Recommendation to NERC to approve or disapprove the Exception Request in whole or in part, the Technical Review Panel shall review the proposed determination and issue an opinion with copies provided to the Owner and to NERC, in accordance with section 5.3.

### **5.1. Initial Screening of Exception Request for Acceptance or Rejection**

**5.1.1.** Upon receipt of an Exception Request, the Regional Entity will assign a unique identifier to the Exception Request, and will review the Exception Request to determine that the Exception Request is from an eligible (in accordance with section 4.1) Submitting Entity for an Exception from the application of the BES Definition and that all Required Information has been provided. If the Exception Request indicates that the Submitting Entity has submitted a similar Exception Request to one or more other Regional Entities, the Regional Entities shall coordinate their actions undertaken pursuant to this section 5.0. If the Exception Request is for an Element that crosses boundaries between or among Regional Entities, the Regional Entities shall cooperatively determine a lead Regional Entity to assess the request in a single process yielding a single Recommendation to NERC.

**5.1.2.** The unique identifier assigned to the Exception Request will be in the form of XXXX-YYYY-NERCID-ExceptionZZZZZ, where “XXXX” is the year in which the Exception Request is received by the Regional Entity (*e.g.*, “2012”); “YYYY” is the acronym for the Regional Entity within whose geographic boundaries the relevant Element or Elements are located<sup>2</sup>; NERCID is the Submitting Entity’s NERC Compliance Registry ID (or an abbreviation of its name if an ID is not yet assigned); and “ZZZZZ” is the sequential number of the Exception Requests received by the Regional Entity in that year. If the Exception Request is amended or resubmitted, “-AZ” will be added to the end of the identifier, where “Z” is the number of the amendment to the Exception Request. If the Exception Request is for an Element that crosses boundaries between or among Regional Entities, the YYYY identifier shall be that of the lead Regional Entity assessing the request.

**5.1.3.** The Regional Entity will complete its initial screening of the Exception Request Form and any Owner’s response submitted pursuant to section 4.5.4 no later than either sixty (60) days after receiving the Exception Request or, if the Submitting Entity is not the Owner, thirty (30) days after receiving any Owner’s response, whichever is later, unless (i) the

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<sup>2</sup> The acronyms to be used are: FRCC (Florida Reliability Coordinating Council); MRO (Midwest Reliability Organization); NPCC (Northeast Power Coordinating Council); RFC (ReliabilityFirst Corporation); SERC (SERC Reliability Corporation); SPP (Southwest Power Pool Regional Entity); TRE (Texas Reliability Entity); and WECC (Western Electricity Coordinating Council), and NERC in cases where the Exception Request is submitted to NERC.

Regional Entity has established an alternative time period objective and work plan for completing initial screenings pursuant to this section 5.0 that provides for a different time period(s) for completing initial screenings, or (ii) the Regional Entity issues a notice to the Submitting Entity, and to the Owner if different, prior to the deadline date for completing the initial screening, stating that the Regional Entity will not be able to complete the initial screening by the deadline date and stating a revised deadline date.

**5.1.4.** If, based on its initial screening, the Regional Entity determines the Exception Request is from an eligible (in accordance with section 4.1) Submitting Entity for an Exception from the BES Definition, and that all Required Information has been provided, the Regional Entity shall accept the Exception Request as complete and send a notice of such Acceptance to the Submitting Entity, with a copy to the Owner, if different than the Submitting Entity, and to NERC.

**5.1.5.** (a) If the Regional Entity determines, based on its review of the Exception Request, that the Exception Request (i) is not from an eligible (in accordance with section 4.1) Submitting Entity for an Exception from application of the BES Definition, and/or (ii) does not contain all Required Information, the Regional Entity shall reject the Exception Request as incomplete and send a notice of such Rejection to the Submitting Entity, with a copy to the Owner, if different than the Submitting Entity, and to NERC. To the extent feasible, if an Exception Request Form is missing Required Information, the Regional Entity shall not reject the Exception Request until (1) it has contacted the Submitting Entity to request that the Exception Request Form be supplemented with the missing Required Information, and (2) the Submitting Entity has failed to submit such Required Information within thirty (30) days or such additional period of time as the Regional Entity may allow at its discretion based on the circumstances. Under appropriate confidentiality/security agreements, the Regional Entity shall facilitate the access to data and information from other entities required by the Submitting Entity to accurately supply the **Detailed Information to Support an Exception Request** (e.g., interconnection base case power flow studies) and/or by the Owner to accurately respond. When a Submitting Entity submits supplemental Required Information in response to a request under this section 5.1.5(a), the time for the Regional Entity to perform its initial screening will be extended for fifteen (15) days after receipt of the supplemental Required Information.

(b) If the Regional Entity rejects the Exception Request in accordance with section 5.1.5 (a), the Regional Entity's notice shall explain the reason for the Rejection. The Submitting Entity may, within thirty (30) days after receipt of the Rejection, appeal to NERC in accordance with section 7.0 of this Exception Procedure to reverse the Rejection and to direct the Regional Entity to proceed with a substantive review of the Exception Request.

**5.1.6.** The Regional Entity may either accept the Exception Request in its entirety, reject the Exception Request in its entirety, or if the Exception Request is for more than one Element, may accept it with respect to a subset of the Elements and reject it with respect to the remainder based on the similarity of the evidence presented for the Exception Request.



## **5.2 Substantive Review of Exception Request for Approval or Disapproval**

**5.2.1** After Acceptance of an Exception Request, the Regional Entity shall conduct a substantive review of all evidence provided as part of an Exception Request or response to evaluate whether or to what extent the Exception Request should be approved. As part of its substantive review, depending on the circumstances of the Exception Request, the Regional Entity may request access to and review the Required Information, including any Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information that is necessary to support the Exception Request; may conduct one or more physical inspections of the relevant Element(s) and its (their) context and surrounding Elements and Facilities; may request additional information from the Submitting Entity, Owner, or applicable PAs, RCs, BAs, TOPs and TPs; and may engage in further discussions concerning possible revisions to the Exception Request.

**5.2.2.** At the outset of its substantive review of the Exception Request, the Regional Entity shall develop a milestone schedule pursuant to which it plans to conduct the substantive review, and shall send a copy of the milestone schedule to the Submitting Entity and the Owner, if different, for information. The Regional Entity shall complete the substantive review of the Exception Request within six months after Acceptance of the Exception Request or within an alternative time period under section 5.0, at the conclusion of which the Regional Entity shall issue a notice (in accordance with section 5.2.3) stating its Recommendation that the Exception Request be approved or disapproved. The Regional Entity may extend the period of substantive review for individual Exception Requests; the revised date by which the Regional Entity will issue its Recommendation concerning the Exception Request shall be stated in a notice issued by the Regional Entity.

**5.2.3.** Upon completion of its substantive review of the Exception Request, the Regional Entity shall issue a Recommendation to NERC, with a copy to the Submitting Entity and to the Owner if different than the Submitting Entity, including the Regional Entity's evaluation of whether and to what extent the Exception Request qualifies to be approved in its entirety or be disapproved in its entirety, or if the Exception Request is for more than one Element, to be approved with respect to a subset of the Elements and disapproved with respect to the remainder of the Elements. The Recommendation shall set forth the basis on which the Regional Entity arrived at its Recommendation. With the Recommendation, the Regional Entity will also send NERC copies of the Exception Request Form and all other information considered by the Regional Entity in arriving at its Recommendation.

**5.2.4** The Regional Entity shall not recommend Disapproval of the Exception Request in whole or in part without first submitting the Exception Request for review to a Technical Review Panel and receiving its opinion, in accordance with section 5.3.

**5.2.5** NERC shall develop, and post on its web site, a reporting program and schedule pursuant to which Regional Entities will be required to submit to NERC periodic reports on the numbers, status and timing of their initial screenings and substantive reviews of Exception Requests.

### **5.3 Technical Review Panel**

Each Regional Entity shall establish provisions for a Technical Review Panel consisting of not less than three (3) individuals appointed by the Regional Entity senior executive (CEO, President, General Manager, etc.). Panel members shall comply with Subsection 7 of Section 403 of the NERC Rules of Procedure, shall not have participated in the review of the Exception Request, and shall have the required technical background to evaluate Exception Requests. When the Regional Entity intends pursuant to section 5.2.2 to issue a Recommendation of Disapproval, in whole or in part, the Technical Review Panel must first review the Regional Entity's proposed determinations and provide an opinion, a copy of which shall be provided to the Submitting Entity (and Owner if different) in the event the Regional Entity decides to disapprove the Exception Request. The Regional Entity will not be bound by the opinion of the Technical Review Panel, but such evaluation shall become part of the record associated with the Exception Request and shall be provided to NERC.

### **6.0 SUPPLEMENTATION OF AN EXCEPTION REQUEST PRIOR TO A RECOMMENDATION**

A Submitting Entity or Owner at any time prior to the Regional Entity issuing its Recommendation may supplement a pending Exception Request that is under review by a Regional Entity, either at the request of the Regional Entity or at the Submitting Entity's or Owner's own initiative, for the purpose of providing additional or revised Required Information. The Submitting Entity or Owner shall submit a written explanation of what Required Information is being added or revised and the purpose of the supplementation. Supplementing a pending Exception Request may, in the Regional Entity's discretion, reset the time period for the Regional Entity's initial screening or substantive review, as applicable, of the Exception Request.

### **7.0 APPEAL OF REJECTION OF AN EXCEPTION REQUEST**

The Submitting Entity may submit to the NERC Director of Compliance Operations, with a copy to the Regional Entity and Owner if different, information that demonstrates that the insufficiencies in an Exception Request Form identified in the notice of Rejection by the Regional Entity pursuant to section 5.1.5 are incorrect or otherwise do not warrant Rejection of the Exception Request, and that the Exception Request should be accepted and proceed to substantive review. A Submitting Entity's submission to NERC under this section 7.0 shall be in writing, shall provide the Exception Request which received the Rejection (using the identifier assigned to the Exception Request pursuant to section 5.1.2), and shall set forth a description of the errors that the Submitting Entity believes are in the notice of Rejection. The Submitting Entity's submission must demonstrate that it is eligible (in accordance with section 4.1) to submit the Exception Request and that all Required Information for the Exception Request has been provided. NERC will review the Submitting Entity's submission and the reports submitted by the Regional Entity or Regional Entities pursuant to section 5.1.5 with respect to the Exception Request, and if NERC determines that the Submitting Entity is eligible (in accordance with section 4.1) to submit the Exception Request, that all Required Information has been provided, and that the Exception Request should proceed to substantive review, NERC shall,

within forty-five (45) days after receiving the submission, issue a decision directing the Regional Entity to proceed to a substantive review of the Exception Request in accordance with section 5.2. NERC will send a written notice to the Submitting Entity, the Owner if different, and the Regional Entity stating that NERC either directs the Regional Entity to proceed to a substantive review or that NERC does not direct such a review.

## **8.0 APPROVAL OR DISAPPROVAL OF AN EXCEPTION REQUEST**

Following the date of the Regional Entity's Recommendation to NERC, a Submitting Entity or Owner, will have thirty (30) days to submit a comment in support of or opposition to the Recommendation. The NERC President shall appoint a team of no less than (3) three persons with the required technical background to evaluate Exception Requests to review the Recommendation and accompanying materials provided by the Regional Entity pursuant to section 5.2.3, the Technical Review Panel opinion (if any), and any comment submitted by the Submitting Entity or Owner. The members of the review team shall have no financial, contractual, employment or other interest in the Submitting Entity or Owner that would present a conflict of interest and shall be free of any conflicts of interest in accordance with NERC policies. This review shall be completed within ninety (90) days after NERC receives the Recommendation. NERC may choose to ask the Regional Entity, Submitting Entity and Owner, if different than the Submitting Entity, to appear at a NERC office for interviews or discussion regarding any questions. In lieu of appearing in person at a NERC office, appearances may be, upon the mutual agreement of NERC, the Regional Entity, the Submitting Entity and/or Owner, conducted by a conference call, teleconferencing, or webinar. By the end of the ninety-day review period, the team shall issue a proposed decision either to approve or to disapprove the Exception Request. If the Exception Request concerns more than one Element, the review team's proposed decision may approve the Exception Request in its entirety, disapprove the Exception Request in its entirety, or approve some portion of the Exception Request and disapprove the remaining portion. The proposed decision shall be in writing, shall be based on the team's independent consideration of the full record, and state the basis for the decision. If the proposed decision of the team was not unanimous, the dissenting team member may, if he or she wishes to do so, issue a minority report stating the dissenting member's reasons for disagreement with the proposed decision. Within thirty (30) days after the date of the review team's proposed decision, the NERC President shall issue a final written decision on the Exception Request on behalf of NERC. The final decision may adopt the proposed decision or modify the proposed decision, and may reach a different conclusion than the proposed decision as to whether the Exception Request is approved or disapproved. The final decision issued by the NERC President shall be the decision of NERC with respect to Approval or Disapproval of the Exception Request.

NERC shall provide to the Submitting Entity and to the Owner, if different, copies of any documents considered by the NERC review team in reaching its proposed decision, and any additional documents considered by the NERC President in reaching the final decision, that were not originally provided by, or have not previously been provided to, the Submitting Entity or Owner.

Documentation used to substantiate the decision related to an Exception Request shall be retained by NERC for a minimum of seven (7) years or as long as the Exception is in effect, whichever is longer, unless a different retention period is otherwise identified

## **9.0 CHALLENGES TO APPROVAL OR DISAPPROVAL OF EXCEPTION REQUESTS**

A Submitting Entity or Owner aggrieved by NERC's Approval or Disapproval of an Exception Request or termination of an Exception may, within thirty (30) days following the date of NERC's decision, challenge such determination pursuant to Section 1703 of the NERC Rules of Procedure. If neither a Submitting Entity nor Owner challenges, within such period, NERC's determination with respect to any Element to which the Exception Request or the Exception applies, such determination shall become effective with respect to such Element on the thirty-first day following the date of the NERC decision.

## **10.0 IMPLEMENTATION PERIOD FOR EXCEPTIONS**

### **10.1 Inclusion Exceptions**

In the case of an Element not included in the BES by application of the BES Definition but for which an Inclusion Exception is approved, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly included Element. The Regional Entity and Owner shall confer to agree upon such schedule. If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance Operations of the disagreement, and shall provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

### **10.2 Denials of Exception Requests for Exclusion**

(a) In the case of a newly-constructed or installed Element which is included in the BES by application of the BES Definition but for which an Exception Request for an Exclusion Exception was submitted at least twelve (12) months before commercial operation of the Element, but which Exception Request either is still pending or has been rejected or disapproved at the time of commercial operation, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly constructed or installed Element. The Regional Entity and Owner shall confer to agree upon such schedule. If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance Operations of the disagreement, and shall provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

(b) In the case of an Element which is included in the BES based on application of the current BES Definition but was not included in the BES under the BES Definition in effect immediately prior to the current BES Definition, and for which an Exception Request for an Exclusion Exception was submitted no more than twelve (12) months after the current BES

Definition became effective, but which Exception Request either is still pending or has been rejected or disapproved at the end of any applicable BES Definition implementation plan time period, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly included Element. The Regional Entity and Owner shall confer to agree upon such schedule. If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance Operations of the disagreement, and shall provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

## **11.0 TERMINATION OF AN APPROVED EXCEPTION**

**11.1** An Exception Request typically will be approved without a specified date of termination but will be subject to review to verify continuing justification for the Exception.

**11.2** Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any change of condition which would affect the basis stated by NERC in its decision pursuant to section 8.0 approving the Exception Request. NERC shall review such notification and determine whether to direct the Regional Entity to perform a substantive review (pursuant to section 5.2) to verify continuing justification for the Exception and to issue a Recommendation to NERC.

**11.3** Submitting Entity(ies) shall certify<sup>3</sup> periodically to the appropriate Regional Entity that the basis for an Element being included or excluded in the BES through the Exception remains valid and in connection with each certification, shall provide the Regional Entity with any changes to Section I Required Information or Section II Required Information. The certification shall be due on the first day of the first quarter thirty-six (36) months after the date on which the Exception Request was approved and every thirty-six (36) months thereafter, as long as the Exception remains in effect. If such certification is not provided, the Exception is subject to termination ninety (90) days after the date the certification was due, and the Regional Entity shall send the Submitting Entity and NERC written notice of such termination.

**11.4** If the Regional Entity obtains information through means other than those described in sections 11.2 and 11.3 that indicates an Exception may no longer be warranted, the Regional Entity shall provide such information to NERC. NERC shall review the information and determine whether to direct the Regional Entity to perform a substantive review (pursuant to section 5.2) to verify continuing justification for the Exception and to issue a Recommendation to NERC.

**11.5** If the Regional Entity's Recommendation following a substantive review pursuant to section 11.2 or 11.4 is that the Exception shall be terminated, NERC shall (i) issue a written notice to the Submitting Entity and Owner, if different, that the Exception is under review for possible termination, (ii) allow the Submitting Entity and/or Owner, as applicable, thirty (30)

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<sup>3</sup> The certification shall consider the effect on the basis for the Exception of changes such as Load growth and topological changes, as well as the effect on system limits and impacts as a result of the contingencies listed in Table 1 of each applicable NERC TPL Reliability Standard.

days from the date of the notice to submit comments or information to NERC to show that the Exception continues to be justified and should remain in effect, and (iii) cause the Recommendation to be reviewed in accordance with section 8.0 of this Appendix. If the conclusion of the review is that the Exception should be terminated, NERC shall send a written notice to the Submitting Entity and Owner, if different, stating that the Exception is terminated and the reasons for the termination. When an Element will be included in the BES as a result of the termination of an Exclusion Exception under this section, an implementation plan detailing the schedule for complying with any Reliability Standards applicable to the newly included Element will be developed in accordance with section 10.1 as if it were an Inclusion Exception.

**11.6** Upon request by the Regional Entity, the Submitting Entity(ies) and/or Owner if different shall provide within thirty (30) days the most recent versions of any Section III Required Information so requested.

# NERC Blackout and Disturbance Response Procedures

Effective: July 1, 2014  
**(as noted below)**

The highlighted terms “Reactive Power” and “Load” in this document will become effective as defined terms on July 1, 2014 in accordance with the Bulk Electric System Order (Order No. 773) and the June 13, 2013 Order Granting Extension of Time. See Appendix 2 of the Rules of Procedure.

North American Electric Reliability Corporation

## **NERC Blackout and Disturbance Response Procedures**

### **Introduction**

NERC, through its professional staff and the Regional Entities and their members, provide the best source of technical and managerial expertise for responding to major events that affect the Bulk Power System.

NERC's role following a blackout or other major Bulk Electric System disturbance or emergency is to provide leadership, coordination, technical expertise, and assistance to the industry in responding to the event. Working closely with the Regional Entities and Reliability Coordinators, NERC will coordinate efforts among industry participants, and with state, federal, and provincial governments in the United States and Canada to support the industry's response.

When responding to any event where physical or cyber security is suspected as a cause or contributing factor to an event, NERC will immediately notify appropriate government agencies and coordinate its analysis with them.

During the conduct of some NERC-level analyses, assistance may be needed from government agencies. Collaborative analysis with certain government agencies may be appropriate in some cases; e.g., collaborating with the Nuclear Regulatory Commission technical staff when a system event involves a nuclear unit. This assistance could include: authority to require data reporting from affected or involved parties; communications with other agencies of government; analyses related to possible criminal or terrorist involvement in the event; resources for initial data gathering immediately after the event; authority to call meetings of affected or involved parties; and technical and analytical resources for studies. If a federal or multi-national government analysis is called for, government agencies should work in primarily an oversight and support role, in close coordination with the NERC analysis.

It is critical to establish, up front, a clear delineation of roles, responsibilities, and coordination requirements among industry and government for the analysis and reporting of findings, conclusions, and recommendations related to major blackouts, disturbances, or other emergencies affecting the Bulk Power System.

Depending on the severity and of the event and the area impacted, the event analysis may be conducted either by NERC or by the impacted Regional Entity. If the analysis is conducted by the Regional Entity, NERC staff, at least one member of the NERC Event Analysis Working Group (in addition to the Event Analysis Working Group member from the impacted Regional Entity), and other appropriate technical experts from the NERC community will participate as members of the Regional Entity analysis team.

A Regional Entity may request NERC to elevate an analysis to a NERC-level. In such cases, all team responsibilities will shift to NERC, and the Regional Entity may continue to participate in the analysis on appropriate teams.

These procedures do not represent a "cookbook" to be followed blindly. They provide a framework to guide NERC's response to events that may have multiregional, national, or



international implications. Experienced industry leadership would still be required to tailor the response to the specific circumstances of the event.

Responding to major blackouts and other system disturbances can be divided into four phases:

1. situation assessment and communications;
2. situation tracking and communications;
3. data collection, investigation, analysis and reporting; and
4. follow-up on recommendations.

### **Phase 1 — Situation Assessment and Communications**

NERC's primary roles in Phase 1 are to:

- conduct an initial situation assessment;
- call for the collection of and analyze necessary initial data and information for the event;
- assist the Regional Entity-lead analysis with determining the need for supplemental technical expertise from the NERC community;
- issue initial findings, conclusions, and recommendations;
- maintain detailed data records (not subject to Freedom of Information Act);
- assist government agencies in criminal analyses when relevant;
- provide technical expertise for modeling and analyzing the event; and
- follow up on recommendations.

While conducting its initial situation assessment, NERC will make an early determination as to whether the cause of the event may be related to physical or cyber security, and communicate as appropriate with government agencies.

Notice of a event is typically received by the NERC Electricity Sector Information Sharing and Analysis Center (ESISAC) person on duty and relayed to other appropriate NERC personnel.<sup>1</sup> NERC performs an initial situation assessment by contacting the appropriate Reliability Coordinator(s), and makes a decision on whether to activate its crisis communications plan. At the initial stage in gathering information about an incident, it is critical to minimize interference with Bulk Electric System operators who are in the process of restoring the system. To minimize interference with their work, NERC, in its capacity as the ESISAC, should serve as the primary communications link with government agencies.

The ESISAC Concept of Operations (ConOps) specifies the operations plan, communications procedures, and logistics NERC will follow during normal conditions, emergencies, and national security special events. The ConOps includes the primary points of contact (24x7) for the Federal Energy Regulatory Commission, U.S. Department of Energy, U.S. Department of Homeland Security, U.S. Nuclear Regulatory Commission, and Public Safety and Emergency Preparedness Canada.

It is important that during these early hours the ESISAC, in coordination with government agencies, determine whether this event was caused by the actions of criminal or terrorist parties. The results of this criminal assessment are essential to operators because if there is a possibility that the "attack" is still ongoing, restoration and response actions would need to be tailored to

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<sup>1</sup> NERC maintains 24x7 contact information for its key personnel to facilitate such contacts.  
NERC Blackout and Disturbance Response Procedures – Effective July 1, 2014

these circumstances. If NERC and government agencies deem it necessary for further criminal analyses, NERC will issue a formal notice to affected systems to retain all relevant information gathered during this and subsequent phases of an analysis.

The specific criteria for reporting disturbances and other events are described in NERC Reliability Standard EOP-004-1. These criteria and procedures are intended to provide a common basis for consistent reporting of abnormal system conditions and events that occur in North America. All entities responsible for the reliability of Bulk Power Systems in North America must ensure that sufficient information is submitted to NERC within the time frame required. Reliability Coordinators will use the Reliability Coordinator Information System (RCIS) as the primary method of communications to NERC. The ESISAC duty person is responsible for monitoring the RCIS for such notifications.

Depending on the scope and magnitude of the event, NERC will issue media advisories through its crisis communications plan.

### **Phase 2 — Situation Tracking and Communications**

Based on the nature and severity of the event, in Phase 2 NERC will continue to track progress in restoring the Bulk Power System and service to customers, and keep industry, government agencies, and the public informed. The most important thing to recognize in this phase is that the primary focus of Reliability Coordinators and Transmission Operators is the prompt restoration of the Bulk Electric System. NERC will coordinate requests by government agencies for information from Reliability Coordinators and Transmission Operators, and serve as a conduit and coordinator between industry and government for regular status reports on the restoration.

As events continue, NERC will determine whether a detailed analysis of the event should be conducted, and start to identify manpower requirements, data collection and retention requirements, and at what level the analysis should be conducted. If the event is localized within a Region, NERC will participate in the event analysis of the Regional Entity.

### **Phase 3 — Data Collection, Investigation, Analysis, and Reporting**

Based on the scope, magnitude, and impact of an event, during Phase 3 NERC may:

1. perform an overview analysis of system and generator response;
2. rely on one of its Regional Entities to conduct the analysis and monitor the analysis results;
3. work with a Regional Entity in its analysis; or
4. conduct a NERC-level analysis.

The NERC CEO will decide, based on the initial situation assessment and consultation with the NERC technical committee officers<sup>2</sup>, if a NERC-level analysis is warranted. If a NERC-level analysis is to be conducted, the NERC CEO will appoint the Director of Events Analysis and Information Exchange to lead the analysis and assemble a high-level technical steering group to provide guidance and support throughout the analysis.

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<sup>2</sup> NERC will maintain a list of 24x7 contact information for its technical committee officers.

NERC reserves the right to elevate or augment an analysis performed by a Regional Entity pending the results of the Regional Entity analysis. Additional requests for analyses or supporting data may be made by NERC at any time in the investigation process.

A Regional Entity may request NERC to elevate an analysis to a NERC-level. In such cases, all team responsibilities will shift to NERC, and the Regional Entity may continue to participate in the analysis on appropriate teams.

If the analysis is to be led by one of the Regional Entities, a member of the NERC staff, at least one member of the NERC Event Analysis Working Group (in addition to an Event Analysis Working Group member from the impacted Regional Entity), and other appropriate technical experts from the NERC community will participate as a triage team. The triage team will participate as members of the Regional Entity analysis team. The triage team will also assist the Regional Entity with determining if additional technical expertise from the NERC community are needed for the analysis.

For NERC-level analyses, the first task of the Director of Events Analysis and Information Exchange would be to identify what technical and other resources and data would be needed from staff, the industry, and government, and to issue those requests immediately. This task will include identification of any special managerial, forensic, or engineering skills needed for the analysis. Secondly, the Director of Events Analysis and Information Exchange must issue requests for those resources and information. Third, the Director of Events Analysis and Information Exchange must organize the teams that will conduct and report on the analysis.

The teams needed for a particular analysis will vary with the nature and scope of the event. Attachment A describes the typical teams that would be required for a NERC-level analysis, and Attachment B provides suggested guidelines for the NERC-level analysis team scopes. Individuals that participate on these teams will be expected to sign an appropriate confidentiality agreement. NERC uses a standard (pro forma) confidentiality agreement (Attachment C) for participants in event analyses, which it will adapt for specific analyses.

The Blackout and Disturbance Analysis Objectives, Approach, Schedule, and Status (Attachment D) and Guidelines for NERC Reports on Blackouts and Disturbances (Attachment E) are used to guide and manage analysis and reporting on major blackouts and disturbances.

A NERC-level analysis will comprise (a) collecting pertinent event data; (b) constructing a detailed sequence of events leading to and triggering the disturbance; (c) assembling system models and data and conducting detailed system analysis to simulate pre- and post-event conditions; and (d) issuing findings, conclusions, and recommendations. The details of these four phases of the analysis are:

**a. Collecting Pertinent Event Data**

- Collect all pertinent event logs, disturbance recorders, operator transcripts, and other system data.

#### **b. Detailed Sequence of Events**

- Construct a detailed sequence of events leading to and triggering the event. Reconcile event logs, disturbance recorders, operator transcripts, and other system data to create an accurate sequence of events.
- Enter and preserve all data in a secure data warehouse.

#### **c. Detailed System Analysis**

- Assess the sequence of events to determine critical times for study.
- Assemble the necessary system models and data from Regional Entity and operating entities to accurately model (with power flow and dynamic simulations) the pre-event conditions.<sup>3</sup> Determine pre-event conditions at critical times prior to event initiation, including an assessment of reliability margins in the pre-event time frame.
- Analyze data from phasor measurement units, high-speed data recorders, digital fault recorders, digital relays, and system relay targets.<sup>4</sup>
- Analyze generator and Load performance, including underfrequency and undervoltage relay actions.
- Use the model information and sequence of events to dynamically model the trigger events and the outage sequence. Identify the system phenomena that propagated the failure. Provide graphical results showing the nature of the cascade. Conduct additional analyses as initial findings identify the need for further study.

#### **d. Findings, Conclusions, and Recommendations**

- Identify and assess failures contributing to the event, including possible instability conditions, system protection mis-operations, generator actions, etc.
- Either identify or rule out man-made/criminal cyber or physical attacks on the electric system.
- Determine if the system was being operated within equipment and system design criteria at the time of the outage.
- Assess the qualifications, training, SCADA/EMS tools, and communications available to system operators and Reliability Coordinators, and how effective these were leading up to and during the event.
- Assess the adequacy of communications system and communications among system operators.
- Identify any issues regarding maintenance or equipment conditions that may have contributed to the outage.
- Determine whether system restoration procedures were available and adequate. Identify any issues that caused unexpected delays in the restoration of generators and Loads.
- Identify the root causes<sup>5</sup> and contributing factors of the Cascading outage.

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<sup>3</sup> NERC is developing standards for data and model validation that will facilitate modeling activities in future blackout analyses.

<sup>4</sup> NERC is developing standards for dynamic monitoring equipment and the deployment of such equipment at critical locations in the Bulk Electric System.

<sup>5</sup> NERC will rely on root cause analysis experts, both from within the industry and outside consultants, to conduct these analyses.

- Recommend actions to prevent Cascading outages in the future and to improve system reliability.
- Determine whether the system is adequately designed.
- All compliance issues will be referred to the NERC Director of Compliance.

#### **Phase 4 — Follow-up on Recommendations**

For Phase 4 NERC and the Regional Entities will follow up on specific recommendations coming from all analyses, whether done at the Regional Entity or NERC level. In certain cases, where government agencies have taken a direct role in the analysis, reports will be made to those agencies on progress in addressing the recommendations.

## Typical Team Assignments for Analysis of Blackouts or Disturbances<sup>6</sup>

### Fact-Finding Teams

- Physical and/or cyber security (if needed)
- On-site interviews
- System data collection (frequency, voltages, generation and Loads)<sup>7</sup>
- System protection and control information
- System restoration
- Coordination with Regional Entity teams

### Assessment and Analysis Teams

- Performance of generation and transmission Protection Systems
- Frequency analysis
- Equipment maintenance
- SCADA/EMS/Tools
- Operator training
- Reliability Standards compliance
- System planning
- System operation
- System restoration
- Root cause analysis
- System simulation
- Interregional coordination
- Vegetation management
- Recommendations for future actions
- Security and law enforcement liaison

### Data Management Teams

- Data requests
- Data collection
- Data warehouse – entry, logging, retention, and maintenance<sup>8</sup>
- Data release<sup>9</sup>

### Report Writing Teams

- Text
- Graphics
- Presentations

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<sup>6</sup> The analysis team leader will specify the tasks required of each team.

<sup>7</sup> Standard forms and procedures for the collection of data and information will be adapted for particular circumstances.

<sup>8</sup> Experience with data warehousing and access procedures gained during the investigation of the August 2003 blackout will be used in future investigations.

<sup>9</sup> Data release procedures will prevent inappropriate disclosure of information.

**Communications Teams**

- Press releases
- Interface with government agencies
- Interviews

## NERC Blackout and Disturbance Response Procedures Guidelines for Analysis Team Scopes

Each blackout or disturbance is unique and will therefore demand a customized approach to its analysis. The following guidelines for analysis team scopes are suggestive rather than definitive. Not all the teams listed may be needed for a particular analysis.

**Data Requests and Management** — This team organizes large volumes of raw data and value-added information produced by analysts in support of the blackout analysis into a data warehouse. The team issues data requests from affected entities, catalogs and stores all data received, and provides secure and confidential access to teams and personnel supporting the analysis. The team serves as the single point for issuing data requests, receiving and storing data, and managing data queries by the analysts, and is responsible for assuring consistency, security, and confidentiality of the data and minimizing redundant data requests.

**Sequence of Events** — A precise, accurate sequence of events is a building block for all other aspects of the analysis, and is a starting point for the root cause analysis. It is the basis for developing computer models to simulate system conditions and evaluate steady state and stability conditions in the period leading to blackout. The sequence of events is the foundation of facts upon which all other aspects of the analysis can proceed.

**System Modeling and Simulation Analysis** — System modeling and simulation allows the investigators to replicate system conditions leading up to the blackout. While the sequence of events provides a precise description of discrete events, it does not describe the overall state of the electric system and how close it was to various steady state, voltage stability, and power angle stability limits. An accurate computer model of the system, benchmarked to actual conditions at selected critical times, allows analysts to conduct a series of sensitivity studies to determine if the system was stable and within limits at each point in time leading up to the blackout, and at what point the system became unstable. It also allows analysts to test different solutions to prevent Cascading. Although it is not possible to recreate the entire blackout sequence, simulation methods will reveal the mode(s) of failure initiating the blackout and propagating through the system.

**Root Cause Analysis** — Root cause analysis guides the overall analysis process by providing a systematic approach to evaluating root causes and contributing factors leading to the blackout or disturbance. This team works closely with the technical analysis teams and draws on other data sources as needed to record verified facts regarding conditions and actions (or inactions) that contributed to the blackout or disturbance. The root cause analysis guides the overall analysis by indicating areas requiring further inquiry and other areas that may be of interest regarding lessons learned, but are not causal to the blackout. Root cause analysis enables the analysis process to develop a factual record leading to logical and defensible conclusions in the final report regarding the causes of the blackout.

**Operations Tools, SCADA/EMS, Communications, and Operations Planning** — This team will assess the observability of the electric system to operators and Reliability Coordinators, and the availability and effectiveness of operational (real-time and day-ahead)



reliability assessment tools, including redundancy of views and the ability to observe the “big picture” regarding Bulk Electric System conditions. The team also investigates the operating practices and effectiveness of those practices of operating entities and Reliability Coordinators in the affected area. This team investigates all aspects of the blackout related to operator and Reliability Coordinator knowledge of system conditions, action or inactions, and communications.

**Frequency/ACE** — This team will analyze potential frequency anomalies that may have occurred, as compared to typical interconnection operations, to determine if there were any unusual issues with control performance and frequency and any effects they may have had related to the blackout.

**System Planning, Design, and Studies** — This team will analyze the responsibilities, procedures, and design criteria used in setting System Operating Limits, and compare them to good utility practice. The team will review the actual limits in effect on day of the blackout and whether these limits were being observed. The team will review voltage schedules and guides, and reactive management practices in the affected areas, including use of static and dynamic reactive reserves. The team will analyze the tagged and scheduled transactions to determine if inter-regional transfer limits were understood and observed. The team will analyze system planning and design studies completed in the affected areas to determine if operating conditions were consistent with the assumptions of those studies and whether the planning and design studies were sufficient and effective.

**Transmission System Performance, Protection, Control, Maintenance, and Damage** — This team investigates the causes of all transmission Facility automatic operations (trips and reclosures) leading up to the blackout on all Facilities greater than 100 kV. This review includes relay protection and remedial action schemes, identifying the cause of each operation, and any misoperations that may have occurred. The team also assesses transmission Facility maintenance practices in the affected area as compared to good utility practice and identifies any transmission equipment that was damaged in any way as a result of the blackout. The team will assess transmission line rating practices and the impact that ambient temperature and wind speeds had on the transmission line performance in terms of the design temperature of the transmission conductors. The team shall report any patterns and conclusions regarding what caused transmission Facilities to trip; why the blackout extended as far as it did and not further into other systems; why the transmission separated where it did; any misoperations and the effect those misoperations had on the blackout; and any transmission equipment damage. The team will also report on the transmission Facility maintenance practices of entities in the affected area compared to good utility practice. Vegetation management practices are excluded here and covered in a different team.

**Generator Performance, Protection, Controls, Maintenance and Damage** — This team will investigate the cause of generator trips for all generators with a 10 MW or greater nameplate rating leading to and through the end of the blackout. The review shall include the cause for the generator trips, relay targets, unit power runbacks, and voltage/Reactive Power excursions. The team shall report any generator equipment that was damaged as a result of the blackout. The team shall report on patterns and conclusions regarding what caused generation Facilities to trip. The team shall identify any unexpected performance anomalies or unexplained events. The team shall assess generator maintenance practices in the affected area as compared

to good utility practice. The team will analyze the coordination of generator under-frequency settings with transmission settings, such as under-frequency **Load** shedding. The team will gather and analyze data on affected nuclear units and work with the Nuclear Regulatory Commission to address nuclear unit issues.

**Vegetation/ROW** — This team investigates the practices of transmission Facility owners in the affected areas for vegetation management and ROW maintenance. These practices will be compared with accepted utility practices in general, and with NERC Reliability Standards. The team will evaluate whether the affected parties were within their defined procedures at the time of the blackout and will investigate historical patterns in the area related to outages caused by contact with vegetation.

**Analysis Process and Procedures Review** — This team will review the process and procedures used in the analysis of the blackout, make recommendations for improvement, and develop recommendations for appropriate processes, procedures, forms, etc. to guide and expedite future analyses including coordination and cooperation between NERC, its Regional Entities, and government agencies.

**Restoration Review** — All entities operating portions of the Bulk Electric System in North America are required by NERC Reliability Standards to maintain system restoration plans and black start plans, and Reliability Coordinators are required to coordinate the implementation of those plans. This team will review the appropriateness and effectiveness of the restoration plans implemented and the effectiveness of the coordination of these plans.

**NERC and RE Standards/Procedures and Compliance** — This team reviews the adequacy of NERC Reliability Standards, Regional Reliability Standards and Regional Entity procedures, and the Compliance Monitoring and Enforcement Program to address issues leading to the blackout. The team also reviews the compliance of the affected operating entities with Reliability Standards. For less significant event analyses, this team may not be needed. However, all compliance issues will be referred to the NERC Director of Compliance.

**NERC CONFIDENTIALITY AGREEMENT  
FOR  
ANALYSIS OF BLACKOUTS AND DISTURBANCES**

This Confidentiality Agreement (“Agreement”), dated \_\_\_\_\_, is between the North American Electric Reliability Corporation (“NERC”), and

\_\_\_\_\_, a member of the NERC Event Analysis Team (“Team Member”)(collectively referred to as “Parties”).

**WHEREAS**, NERC is conducting an analysis of the power event that occurred in \_\_\_\_\_ on \_\_\_\_\_ and related matters (“Event”); and

**WHEREAS**, NERC has established a team to carry out that analysis (“Event Analysis Team”); and

**WHEREAS**, in order for the Event Analysis Team to fulfill its objectives, it is necessary for the Event Analysis Team have access to confidential or business sensitive information from operating entities within the \_\_\_\_\_ and to be able to conduct open and unconstrained discussions among team members,

The Parties therefore agree as follows:

1. The term “Event Analysis Information” means all information related in any way to the Event that operating entities within the \_\_\_\_\_ or their representatives have furnished or are furnishing to NERC in connection with NERC’s analysis of the Event, whether furnished before or after the date of this Agreement, whether tangible or intangible, and in whatever form or medium provided (including, without limitation, oral communications), as well as all information generated by the Event Analysis Team or its representatives that contains, reflects or is derived from the furnished Event Analysis Information; provided, however, the term “Event Analysis Information” shall not include information that (i) is or becomes generally available to the public other than as a result of acts by the undersigned Parties or anyone to whom the undersigned Parties supply the Information, or (ii) is known to or acquired by the Team Member separate from receiving the information from the Event Analysis Team.

2. The Team Member understands and agrees that the Event Analysis Information is being made available solely for purposes of the Event Analysis and that the Event Analysis Information shall not be used in any manner to further the commercial interests of any person or entity. The Team Member further understands and agrees that he or she will not disclose Event Analysis Information to any person who has not signed this Agreement except as such disclosure may be required by law or judicial or regulatory order.

3. If Team Member’s employing organization has signed the NERC Confidentiality Agreement for Electric System Security Data (“NERC Security Data Agreement”), paragraph 2 shall not be deemed to prohibit Team Member from disclosing Event Analysis Information to NERC Blackout and Disturbance Response Procedures – Effective July 1, 2014

other employees of that organization, but only to the extent that “security data” as defined in the NERC Security Data Agreement is shared within the organization.

4. The Parties expressly agree that Event Analysis Information shall otherwise only be disclosed through official releases and reports as authorized by NERC.

5. It shall not be a violation of the NERC Confidentiality Agreement for Electric System Security Data for a Reliability Coordinator to furnish Event Analysis Information to an Event Analysis Team Member who has signed this Agreement.

6. This Agreement shall be for sole benefit of the parties hereto. This Agreement may be modified or waived only by a separate writing signed by the Parties. If any clause or provision of this Agreement is illegal, or unenforceable, then it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. This Agreement will be governed and construed in accordance with the laws of the State of New Jersey, except for any choice of law requirement that otherwise may apply the law from another jurisdiction.

7. This Agreement shall have a term of two (2) years from the date hereof, except that the obligations of paragraphs 2, 3, and 4 shall continue for five (5) years from the date hereof.

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**NERC EVENT ANALYSIS TEAM MEMBER**

Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

### NERC Blackout and Disturbance Analysis Objectives, Analysis Approach, Schedule, and Status

Analysis Objective	Analysis Approach	Schedule	Status
<b>Pre-Event Conditions</b>			
1. What was the precursor sequence of events leading to the event?	<ul style="list-style-type: none"> <li>• Assemble data/alarm logs and time-stamped sequence information.</li> <li>• Develop and maintain an expanding database of log and time-stamped sequence information.</li> <li>• Develop a precursor sequence of high-level, events relevant to, and leading to event initiation.</li> <li>• Reconcile the precursor sequence of events with those emerging from Regional Entities, RTOs, and operating entities.</li> </ul>		
2. What time frames are relevant for pre-event assessment of system conditions? What points in time should be used to establish a baseline set of study conditions when the system was last known to be stable and within normal operating criteria?	<ul style="list-style-type: none"> <li>• Referencing precursor sequence of events, determine relevant times to develop base case conditions (stable and within normal operating criteria).</li> <li>• Verify relevant time horizons and availability of system data at those times with Regional Entities, RTOs, and operating entities.</li> </ul>		
3. What models and data can best simulate system conditions prior to and during the event? What is the relevant scope of the system for detailed study (what is considered the boundary of the study system and what is considered neighboring or external systems?)	<ul style="list-style-type: none"> <li>• Identify up-to-date power system model(s) appropriate for powerflow and transient and dynamic simulations (determine if detailed eastern Interconnection model is needed or multi-regional model(s) are needed.</li> <li>• Identify what models are available in Regional Entities, RTOs, and operating entities.</li> <li>• Identify who will actually perform power flow, transient and dynamic simulations; hire contractor(s) as needed.</li> <li>• Identify and assemble data required for these models.</li> <li>• Develop and maintain a system data repository.</li> </ul>		

Analysis Objective	Analysis Approach	Schedule	Status
<p>4. What system conditions existed in the precursor time horizon leading up to the event (at the times identified in 1.)?</p>	<ul style="list-style-type: none"> <li>• Obtain and manage data for powerflow: system configuration, planned and unplanned outages, unit commitment and dispatch, interchange schedules, congestion conditions, reserves, <b>Loads</b>, state estimator snapshots, deratings and limitations, frequency, etc. Identify who will maintain and run powerflow simulations.</li> <li>• Work with Regional Entities, RTOs, and operating entities to develop powerflow cases defining the base conditions for each relevant time, ensuring the powerflows model each critical juncture leading up to the event.</li> <li>• Identify and review results of additional studies completed by Reliability Coordinators, RTOs and operating entities.</li> <li>• Assess the powerflow results with respect to steady state operating criteria (was the system within all known limits at each precursor time)?</li> </ul>		
<p>5. Were there any prior-existing abnormalities, instabilities, reliability criteria violations, or reliability issues in the precursor sequence time horizon? Prior to event initiation were there any latent instability conditions that would suggest the system was at risk? Were the precursor conditions ones that had been previously studied by the entities involved? Were there adequate reserves with effective distribution? Were planned outages effectively coordinated?</p>	<ul style="list-style-type: none"> <li>• Work with Regional Entities, RTOs, and operating entities to obtain and manage transient and dynamic models for simulations.</li> <li>• Identify who will conduct transient and dynamic simulations and if external contractor(s) are required.</li> <li>• Conduct transient and dynamic simulations at each of the precursor study times.</li> <li>• Assess the stability of the system at each of these times and identify any latent reliability issues prior to blackout initiation.</li> <li>• Consider creating a visual map of system conditions.</li> <li>• Document the limitations and assumptions of simulations affecting the certainty of the simulation results.</li> </ul>		
<b>Blackout Sequence of Events</b>			
<p>6. What was the sequence of system events leading to and directly triggering the blackout?</p>	<ul style="list-style-type: none"> <li>• Evaluate data logs, fault recorder data disturbance recorder data, and synchro-phasor measurement to establish a detailed sequence of events that initiated the event.</li> <li>• Identify the sequence of events that directly led to the event.</li> <li>• Review and reconcile these trigger events with Regional Entities, RTOs, and operating entity analyses.</li> </ul>		

Analysis Objective	Analysis Approach	Schedule	Status
7. What was the sequence of events during the event?	<ul style="list-style-type: none"> <li>Evaluate logs and disturbance recorder data to establish sequence during the blackout. (The event sequence may follow multiple tracks.)</li> <li>Review and reconcile this sequence with those constructed by Regional Entities, RTOs, and operating entities.</li> <li>Consider developing 3-D, time-lapse visualization of the blackout (U. of Minnesota and/or U. of Wisconsin).</li> </ul>		
8. What was the cause of the event in terms of electrical conditions and other related events? Generally describe any system breakups, islanding, etc. Were there conditions of voltage or frequency collapse, or unstable oscillations? Was the sequence strictly a sequential “domino” effect of Facility trips? What were the system conditions (snapshots) at key points during the event?	<ul style="list-style-type: none"> <li>Assess triggering sequence and blackout sequence to establish the causes for the blackout in terms of electrical conditions and events.</li> <li>Select key points in sequence for simulation that are relevant for study and that can be accurately modeled. (It may not be possible to reconcile data sufficiently to recreate system conditions during the blackout.)</li> <li>To the extent possible, conduct simulations and assess results at each point during the blackout.</li> <li>Review and reconcile results with Regional Entities, and operating entities.</li> </ul>		
9. Why did the event extend as far as it did? What arrested the event from extending further into other systems?	<ul style="list-style-type: none"> <li>Using advanced analysis techniques, assess where and why the event was arrested.</li> </ul>		
10. How did affected non-nuclear generators respond during the event? Were trips as expected and required by procedures and standards? Did non-nuclear generators remain connected and support the power system in the manner they should have? Did any generator action, generator control functions, or generator protection systems contribute to the event?	<ul style="list-style-type: none"> <li>Prepare a table of affected generators and actions they made leading up to and during the event, including time-stamped unit trips, relays initiating unit trips, MW and MVar outputs, voltages, and frequency, etc.</li> <li>Analyze the automatic (including relay trips) and operator-initiated actions of non-nuclear generators to determine whether actions were correct under the conditions or not.</li> <li>Reconcile non-nuclear generator data and analysis with that of the Regional Entities, RTOs, and operating entities.</li> </ul>		
11. How did nuclear generators respond leading up to and during the blackout? Were trips as expected and required by procedures and standards? Were there any nuclear safety issues identified?	<ul style="list-style-type: none"> <li>Work with NRC to develop a table of sequence of actions and issues regarding affected nuclear generators (both ones that tripped and those that did not).</li> <li>Refer nuclear issues to NRC for analysis, assisting in their analyses where appropriate.</li> </ul>		
12. What was the sequence and amount of Load lost? What directly caused Load loss (e.g. under-frequency Load shed, loss of transmission source, voltage collapse, relay actions, under/over frequency protection or stalls, etc.)	<ul style="list-style-type: none"> <li>Work Regional Entities, RTOs, and operating entities to develop a description of Load lost/impacted, by area.</li> <li>Analyze and report the cause for Load loss in each area.</li> </ul>		

<b>Analysis Objective</b>	<b>Analysis Approach</b>	<b>Schedule</b>	<b>Status</b>
13. How did system protection and automated controls operate during the event? Did they operate correctly or not?	<ul style="list-style-type: none"> <li>Assess each automatic trip of a transmission or generator Facility for proper or improper relay actions.</li> <li>Assemble and review Regional Entity and operating entity reviews of logs, disturbance reports, and relay targets/logs and reconcile with NERC data.</li> </ul>		
14. Was any equipment damaged during the event?	<ul style="list-style-type: none"> <li>Request information from Regional Entities, and companies on equipment damage, as appropriate.</li> <li>Assess any transmission or generation Facilities sustaining damage during the event, and extent of damage.</li> </ul>		
15. Did SCADA/EMS and data communications systems operate correctly during the event? What problems were noted?	<ul style="list-style-type: none"> <li>Request information from Regional Entities, and companies.</li> <li>Identify and analyze any problems with SCADA/EMS and data communications at regional and company levels.</li> </ul>		
<b>Reliability Standards/Procedures</b>			
16. What NERC Reliability Standards were applicable to the event? What violations occurred? Were NERC Reliability Standards and policies sufficient?	<ul style="list-style-type: none"> <li>Compliance Staff review NERC Reliability Standards relevant to the event and perform a compliance review.</li> </ul>		
17. What Regional Reliability Standards were applicable to the event? What violations occurred? Were Regional Reliability Standards and Regional Entity policies sufficient?	<ul style="list-style-type: none"> <li>Request Regional Entities to review applicable Regional Reliability Standards and report compliance with those Regional Reliability Standards during the event.</li> </ul>		
18. Were any special operating procedures or other operating guidelines in effect and being observed leading up to the event? Were these procedures sufficient?	<ul style="list-style-type: none"> <li>Review and analyze loop flow procedures with involved Regional Entities and companies, and report analysis results.</li> </ul>		
19. What other RTO, Transmission Owner, CA procedures were applicable? What violations occurred? Were the procedures sufficient?	<ul style="list-style-type: none"> <li>Request RTOs, Transmission Owners, CAs to review applicable Reliability Standards and compliance with existing reliability procedures and Reliability Standards during the event, and report results.</li> </ul>		
<b>Maintenance</b>			
20. Are there any indications that maintenance of transmission or generation Facilities may have contributed to the event?	<ul style="list-style-type: none"> <li>Assess whether equipment or maintenance issues (e.g. tree trimming) contributed to the blackout and investigate specifics in areas of concern.</li> <li>Review Regional Entity assessments of maintenance issues that may have contributed to the event.</li> </ul>		



<b>Personnel, Procedures, and Communications</b>			
21. What conditions were operators and Reliability Coordinators aware of leading up to and during the event? What information did they have to warn them of unsafe system conditions? What problems or concerns did they have? What did they observe during the event? Were human errors made that contributed to the event? If there were, what were the causes of the errors?	<ul style="list-style-type: none"> <li>• Develop an interview guide to address procedural and operational issues.</li> <li>• Conduct onsite interviews with operating personnel and Reliability Coordinators involved.</li> <li>• Analyze interview data to corroborate with technical data and report conclusions.</li> </ul>		
22. Were lines of authority clearly understood and respected in the time leading up to and during the event, as well as during the restoration period?	<ul style="list-style-type: none"> <li>• Identify critical instructions given and evaluate results.</li> <li>• Review documentation and effectiveness of assignments of operating and reliability authorities.</li> </ul>		
23. What communications occurred among operating entities?	<ul style="list-style-type: none"> <li>• Review voice communications logs.</li> <li>• Evaluate logs relevant to the blackout and identify key interactions. Report conclusions.</li> </ul>		
24. What were the qualifications (including Certification status) and training of all operating personnel involved in the event and their supervisors?	<ul style="list-style-type: none"> <li>• Request Certification status of all operating personnel from involved operating entities.</li> <li>• Conduct onsite review of training materials and records.</li> <li>• Conduct onsite review of operating procedures and tools</li> </ul>		
25. Was the role and performance of the Reliability Coordinators as expected?	<ul style="list-style-type: none"> <li>• Review the adequacy of reliability plans for the affected Regional Entities.</li> <li>• Review the actions of the affected Reliability Coordinators to determine if they performed according to plans.</li> <li>• Assess whether inter-area communications were effective, both at the control area and Reliability Coordinator levels.</li> </ul>		
<b>System Restoration</b>			
26. Were blackstart and restoration procedures available and adequate in each area? Were they followed and were they adequate to the restoration task? Were pre-defined authorities respected during the restoration?	<ul style="list-style-type: none"> <li>• Onsite audit of blackstart and restoration procedures and plans.</li> <li>• Analyze whether the plans and procedures were used and whether they were sufficient for this outage.</li> </ul>		
27. What issues were encountered in the restoration that created unexpected challenges or delays? What lessons were learned in the restoration (both things that went well and things that did not).	<ul style="list-style-type: none"> <li>• Solicit information from operating entities and Regional Entities regarding unexpected challenges and delays in restoration, and lessons learned.</li> <li>• Analyze what worked well and what did not in the restoration.</li> </ul>		

<b>System Planning and Design</b>			
28. Were the conditions leading up to the event within the design and planning criteria for the transmission systems involved?	<ul style="list-style-type: none"> <li>Request Transmission Owners and Regional Entities involved to report any violations of design or planning criteria prior to or leading up to the blackout.</li> </ul>		
<b>Conclusions and Recommendations</b>			
29. From a technical perspective, what are the root causes of this event? What additional technical factors contributed to making the event possible?	<ul style="list-style-type: none"> <li>Conduct a root cause analysis on the findings and data. Categorize results as “root cause” or “contributing factor”. Focus on technical aspects.</li> </ul>		
30. What are the significant findings and lessons learned resulting from the analysis regarding technical failures leading to the event? What actions are recommended to avoid similar future events and improve Bulk Electric System reliability? What issues may be inconclusive and require future analysis?	<ul style="list-style-type: none"> <li>Draft report of significant findings, lessons learned, and recommendations.</li> </ul>		
31. Final Report	<ul style="list-style-type: none"> <li>Prepare and coordinate publication of final report.</li> </ul>		

## Guidelines for NERC Reports on Blackouts and Disturbances<sup>10</sup>

### Introduction and Purpose

### Executive Summary of Blackout or Disturbance

### Conclusions & Recommendations

### Actions to Minimize the Possibility of Future Blackouts and Disturbances

### Detailed Analysis of Event

#### 1. Sequence of Events

- 1.1. Sequence of transmission and generation events
  - 1.1.1. Reasons for each trip
  - 1.1.2. Sequence of loss of Load
  - 1.1.3. Description of Cascading and islanding

#### 2. System Modeling

- 2.1. Model and assumptions
  - 2.1.1. Equipment ratings and limits
  - 2.1.2. Steady state, system dynamics, and other analyses
  - 2.1.3. Degree of simulation success
  - 2.1.4. Simulation results
  - 2.1.5. Conclusions and lessons learned
- 2.2. Pre-event Conditions
  - 2.2.1. Load levels
    - 2.2.1.1. Forecast vs. Actual
    - 2.2.1.2. Comparison with planning and operational models
  - 2.2.2. Generation dispatch
    - 2.2.2.1. Forecast vs. actual
    - 2.2.2.2. Comparison with day ahead studies
    - 2.2.2.3. Reporting of scheduled and forced outages
  - 2.2.3. Reserve capacity
    - 2.2.3.1. Location of MW reserves
    - 2.2.3.2. Planned vs. actual
  - 2.2.4. Transmission configurations
    - 2.2.4.1. Planned vs. actual
    - 2.2.4.2. Comparison with day ahead studies
    - 2.2.4.3. Reporting of scheduled and forced outages

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<sup>10</sup> Each blackout or disturbance is unique and will therefore demand a customized approach to its investigation and reporting. These guidelines for NERC reports are suggestive rather than definitive. Not all investigations and reports will require covering all of these topics.

- 2.2.5. Interregional transactions
    - 2.2.5.1. Calculated transfer limits
    - 2.2.5.2. Basis for limits – thermal, voltage, and stability
    - 2.2.5.3. Seasonal assessments – Assumptions vs. actual
    - 2.2.5.4. Actual schedules vs. Tagged schedules
      - 2.2.5.4.1. AIE Survey
      - 2.2.5.4.2. Tag Survey
  - 2.2.6. System voltages (profile) and reactive supplies
    - 2.2.6.1. Coordination of reactive supplies and voltage schedules
    - 2.2.6.2. Reactive supply with power transfers
- 2.3. Event Key Parameters
    - 2.3.1. System voltages (profile) and reactive supplies
    - 2.3.2. Power flows and equipment loadings
    - 2.3.3. System dynamic effects
- 3. Transmission system performance**
    - 3.1. Equipment ratings
    - 3.2. Protective relay actions
    - 3.3. Equipment maintenance
    - 3.4. Equipment damage
- 4. Generator performance**
    - 4.1. Generator control actions
    - 4.2. Generator protection
      - 4.2.1. Underfrequency
      - 4.2.2. Overspeed
      - 4.2.3. Excitation systems
      - 4.2.4. Other systems
    - 4.3. Equipment maintenance
    - 4.4. Equipment protection
    - 4.5. Dynamic effects of generators
- 5. System frequency**
    - 5.1. Frequency excursions – pre event
      - 5.1.1. Analysis of frequency anomalies
      - 5.1.2. Effect of time error correction
    - 5.2. Frequency analysis of the event
      - 5.2.1. Remaining interconnection
      - 5.2.2. Islands remaining
- 6. Operations**
    - 6.1. Operational visibility and actions
      - 6.1.1. Reliability Coordinators
        - 6.1.1.1. Delegation and authority
        - 6.1.1.2. Monitoring capabilities
          - 6.1.1.2.1. Scope of coverage and system visibility

- 6.1.1.2.2. Monitoring tools
- 6.1.1.2.3. Data availability and use
- 6.1.1.3. Operations planning capability
  - 6.1.1.3.1. Operational planning tools
  - 6.1.1.3.2. Coordination
- 6.1.1.4. Operating procedures
  - 6.1.1.4.1. Emergency operations
  - 6.1.1.4.2. Loss of monitoring system or components
  - 6.1.1.4.3. Communication procedures
- 6.1.1.5. Operating qualifications and training
  - 6.1.1.5.1. Qualification of operators
  - 6.1.1.5.2. Training provided
  - 6.1.1.5.3. Simulation of emergencies
- 6.1.2. Transmission Operators
  - 6.1.2.1. Authority to take action
  - 6.1.2.2. Monitoring capabilities
    - 6.1.2.2.1. Scope of coverage and system visibility
    - 6.1.2.2.2. Monitoring tools
    - 6.1.2.2.3. Data availability and use
  - 6.1.2.3. Operations planning capability
    - 6.1.2.3.1. Operational planning tools
    - 6.1.2.3.2. Coordination
  - 6.1.2.4. Operating procedures
    - 6.1.2.4.1. Emergency operations
    - 6.1.2.4.2. Loss of monitoring system or components
    - 6.1.2.4.3. Communication procedures
  - 6.1.2.5. Operating qualifications and training
    - 6.1.2.5.1. Qualification of operators
    - 6.1.2.5.2. Training provided
    - 6.1.2.5.3. Simulation of emergencies

## **7. System Planning and Design**

- 7.1. Establishing operating limits
  - 7.1.1. Responsibility for setting limits
  - 7.1.2. ATC and TTC calculations
  - 7.1.3. Planning studies
    - 7.1.3.1. Wide-Area simultaneous transfer limits
      - 7.1.3.1.1. Determination of limits
      - 7.1.3.1.2. Monitoring of limits
      - 7.1.3.1.3. Basis for limits – thermal, voltage, and stability
      - 7.1.3.1.4. Regional Entity assessments
      - 7.1.3.1.5. Other system studies in affected areas
    - 7.1.3.2. Reactive planning
      - 7.1.3.2.1. Reactive reserve planning
      - 7.1.3.2.2. Active vs. static resources
      - 7.1.3.2.3. Voltage stability analysis

7.1.3.3.Regional Criteria and/or NERC Reliability Standards used for planning

7.1.3.3.1. Compliance to these planning Regional Criteria and/or Reliability Standards

## **8. Reliability Standards and Compliance**

### 8.1. Audits

#### 8.1.1. Reliability Coordinators

##### 8.1.1.1.Previous audits and results

8.1.1.1.1. Compliance with NERC Reliability Standards

##### 8.1.1.2.Updated findings based on analysis

##### 8.1.1.3.Post blackout audit results and findings

##### 8.1.1.4.Recommendations for future audits

#### 8.1.2. Balancing Authorities

##### 8.1.2.1.Regional Entity audits

8.1.2.1.1. Compliance with NERC Reliability Standards and Regional Reliability Standards

##### 8.1.2.2.Updated findings based on analysis

##### 8.1.2.3.Post blackout audit results and findings

##### 8.1.2.4.Recommendations for future audits

### 8.2. Regional Criteria and/or NERC Reliability Standards used for operations

8.2.1. Compliance to these operating Regional Criteria and/or Reliability Standards

### 8.3. Reliability Standards

#### 8.3.1. Improvements needed

#### 8.3.2. Potential new Reliability Standards

## **9. Actions to Minimize the Possibility of Future Widespread Events**

9.1. Reliability Standards and compliance to Reliability Standards

9.2. Availability of planned Facilities as scheduled

9.3. Automatic Load shedding programs

9.4. Controlled separation and islanding

9.5. Improved data collection and system monitoring

9.6. Studies of impacts of severe events

## **10. Restoration of Service**

### 10.1. Restoration procedures

#### 10.1.1. RTOs and ISOs

#### 10.1.2. Transmission Operators

#### 10.1.3. Generator Operators

#### 10.1.4. Distribution Providers

### 10.2. Restoring service

#### 10.2.1. Transmission line restoration

##### 10.2.1.1. Within control area/ISO/RTO

##### 10.2.1.2. Interarea tie lines

##### 10.2.1.3. Impediments and other issues

- 10.2.2. Generation restoration
  - 10.2.2.1. Utility-owned generation
  - 10.2.2.2. Independent generation
  - 10.2.2.3. Fuel supply adequacy
  - 10.2.2.4. Fossil units
  - 10.2.2.5. Nuclear units
  - 10.2.2.6. Capacity reserves
  - 10.2.2.7. Coordination with transmission
  - 10.2.2.8. Coordination with **Load** and other generation
  - 10.2.2.9. Impediments and other issues
- 10.2.3. Coordination and communications
  - 10.2.3.1. Within control area/ISO/RTO
  - 10.2.3.2. With outside control areas/ISOs/RTOs
  - 10.2.3.3. Wide-Area coverage
  - 10.2.3.4. Impediments and other issues
- 10.3. Review of restoration procedures
  - 10.3.1. Time to restore customers
  - 10.3.2. Need for modifications
  - 10.3.3. Availability of procedures to necessary participants
  - 10.3.4. Need for training and practice drills
  - 10.3.5. Comparison with other control areas/ISOs/RTOs

## **11. Analysis Process**

- 11.1. Description of process
  - 11.1.1. Organization
  - 11.1.2. Coordination with US-Canada task force
  - 11.1.3. Coordination with Regional Entities and RTOs
  - 11.1.4. Recommended process improvements
    - 11.1.4.1. Use for other events – near misses, etc.
- 11.2. Data management
  - 11.2.1. Data collection processes
    - 11.2.1.1. Data request process
    - 11.2.1.2. Data forms used
  - 11.2.2. Data received
    - 11.2.2.1. Quality and usefulness of data
  - 11.2.3. Data warehousing
    - 11.2.3.1. Data warehouse structure
    - 11.2.3.2. Accessibility of data
  - 11.2.4. Data forms and process for future analyses