

Attachment 1

Section 400 Clean

SECTION 400 — COMPLIANCE MONITORING AND ENFORCEMENT

401. Scope of the Compliance Monitoring and Enforcement Program

1. **Components of the Compliance Monitoring and Enforcement Program** — NERC shall develop and implement a Compliance Monitoring and Enforcement Program (CMEP) 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 or other legal instrument approved by an Applicable Governmental Authority) has been given enforcement authority.
2. **Who Must Comply** — Where required by applicable legislation, regulation, rule or agreement, all Bulk Power System owners, operators, and users are required to comply with all approved Reliability Standards at all times. Regional Reliability Standards and Variances approved by NERC and the Applicable Governmental Authority shall be considered 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 or the Compliance Enforcement Authority (CEA) such Documents, data, and information as is necessary to monitor and enforce compliance with the Reliability Standards. NERC and the CEA will define the data retention and reporting requirements.
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 the CMEP provided in these Rules of Procedure.
5. **Program Continuity** — NERC will ensure continuity of compliance monitoring and enforcement within the geographic boundaries of a Regional Entity if NERC does not have a delegation agreement with a Regional Entity, the Regional Entity or NERC terminates the delegation agreement, or the Regional Entity does not administer the CMEP in accordance with the delegation agreement or other applicable requirements.
 - 5.1 In the circumstances outlined above, the following will apply:
 1. This monitoring and enforcement can be coordinated with 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 information regarding Registered Entities in the geographic footprint or for which the Regional Entity has CMEP responsibilities under coordinated oversight of Registered Entities, as specified in a termination agreement.
 3. NERC will levy and collect all Penalties directly and will utilize any Penalty monies consistent with Section 1107 of the Rules of Procedure.
 - 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 CMEP 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 ERO and Regional Entity-specific risk elements, together with related Reliability Standards and Requirements are to be considered to prioritize CMEP activities. NERC coordinates with the Regional Entities to identify 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. Compliance is required, and NERC and the Regional Entities have authority to monitor compliance, with all applicable Reliability Standards whether or not they are identified as areas of focus to be considered for compliance oversight in the annual ERO CMEP 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 are 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 and Regional Entities shall coordinate to maintain a record of each compliance submission, including potential noncompliance with approved

Reliability Standards; associated Penalties, sanctions, Remedial Action Directives, and settlements; and the status of Mitigating Activities.

10. **Confidential Information** — The types of CMEP 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.

The disclosure by the CEA or NERC of any CMEP Confidential Information shall follow Section 1500.

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

- 11.1 Each Bulk Power System owner, operator, or user may provide NERC with a statement to accompany the publicly posted information. 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 Subject to the disclosure requirements of the Applicable Governmental Authority and redaction of Critical Energy Infrastructure Information, Critical Electric Infrastructure Information, or other Confidential Information, for each resolved noncompliance submitted to the Applicable Governmental Authority, the public posting shall include: a) the name of any relevant entity, b) the nature, time period, and circumstances of the noncompliance, c) any Mitigation Plan or other Mitigating Activities to be implemented by the Registered Entity, and d) 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. **Review of Noncompliance** — NERC staff shall periodically review and analyze reports of noncompliance to identify trends and other pertinent reliability issues.

402. NERC Oversight of the Compliance Monitoring and Enforcement Program

1. **Oversight** — NERC shall oversee each Regional Entity that has been delegated authority. The objective of this oversight is to ensure that the Regional Entity

carries out its obligations under the CMEP 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 execution of the CMEP. Oversight by NERC shall be accomplished through performance metrics, risk-based monitoring activities, and performance reports. Through this oversight, NERC evaluates the Regional Entity's effectiveness and implementation of the CMEP using, among other things, the criteria developed by the NERC Compliance and Certification Committee.

1.1 **Annual ERO CMEP Implementation Plan** — NERC and the Regional Entities will maintain and update an ERO CMEP Implementation Plan. The ERO CMEP Implementation Plan reflects ERO and Regional Entity-specific risk elements that CEAs should prioritize for oversight of Registered Entities.

1.2 **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 implements the CMEP. The audit shall be based on these Rules of Procedure, including Appendix 4C, the delegation agreements, directives in effect pursuant to the delegation agreements, the approved annual ERO CMEP Implementation Plan, required CMEP attributes, and NERC CMEP guidance and procedures. The audit 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 4.1.4 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.

1.3 Applicable Governmental Authorities will be allowed to participate as an observer in any audit conducted by NERC of a Regional Entity's implementation of the CMEP.

2. **Consistency in Regional Implementation of the Compliance Monitoring and Enforcement Program** — To provide for consistency and fairness of the processes used for Regional Entity findings of compliance and noncompliance and the application of Penalties and sanctions for all Bulk Power System owners, operators, and users required to comply with approved Reliability Standards, NERC shall maintain a single CMEP, which is incorporated into these Rules of Procedure as **Appendix 4C**. Any differences in CMEP methods, including

determination of noncompliance and Penalty assessment, shall be justified on a case-by-case basis.

- 2.1 NERC shall periodically conduct Regional Entity CMEP manager meetings. These meetings shall identify and resolve CMEP 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. **Noncompliance Disclosure** — NERC shall follow the process in **Appendix 4C**.
5. **Authority to Determine Noncompliance, Levy Penalties and Sanctions, and Issue Remedial Action Directives** — The CEA 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. Remedial Action Directives may be issued by a CEA 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 noncompliance with 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.
7. **Conflict Disclosure** — NERC shall disclose to the Applicable Governmental Authority any potential conflicts between a market rule and the enforcement of a Reliability Standard.
8. **Confidentiality** — To maintain the integrity of the CMEP, NERC and Regional Entities, Compliance Audit team members, and committee members shall maintain the confidentiality of information obtained and shared during CMEP activities.
 - 8.1 NERC and the Regional Entity shall have in place appropriate codes of conduct and confidentiality agreements for all participants in CMEP activities.

8.2 A participant's failure to follow the code of conduct or Confidential Information provisions of these Rules of Procedure may result in that person and any member organization with which the person is associated losing access to Confidential Information on a temporary or permanent basis and being subject to appropriate action by the Regional Entity or NERC, including prohibiting participation in future CMEP activities. Nothing in Section 1500 precludes an entity whose information was improperly disclosed from seeking a remedy in an appropriate court.

9. **Auditor Training** — NERC shall develop and provide training in auditing skills to participants 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 Implementation of the Compliance Monitoring and Enforcement Program

Each Regional Entity shall (i) conform to and comply with the CMEP, **Appendix 4C** to these Rules of Procedure, except to the extent of any deviations that are justified on a case-by-case basis, and (ii) meet all of the attributes set forth in this Section 403.

Program Structure

1. **Independence** — Each Regional Entity's governance of its CMEP activities shall exhibit independence, meaning the Regional Entity shall be organized so that its CMEP activities are carried out separately from other activities of the Regional Entity. The CMEP activities shall not be unduly influenced by the Bulk Power System owners, operators, and users being monitored. 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 shall exercise the responsibility and authority in carrying out the delegated functions of the CMEP in accordance with delegation agreements and **Appendix 4C**.
3. **Delegation of Authority** — To maintain independence, fairness, and consistency in the CMEP, a Regional Entity shall not sub-delegate its CMEP duties to entities or persons other than the Regional Entity 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** — Unless the Regional Entity has elected to participate in the Consolidated Hearing Process, the Regional Entity board or compliance panel reporting directly to the Regional Entity board will designate a Hearing Body (with appropriate recusal procedures) that will be

vested with the authority for conducting all compliance hearings, pursuant to the hearing process selected under Section 403.15, 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 sector may veto any matter related to compliance after recusals.

Program Resources

5. **Regional Entity 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 CMEP.
6. **Regional Entity Staff Independence** — The Regional Entity Staff, collectively, shall be capable and required to: a) make all determinations of compliance and noncompliance; b) determine Penalties, sanctions, and Remedial Action Directives; and c) review and accept Mitigation Plans and other Mitigating Activities.
 - 6.1 Regional Entity 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 Staff shall have the authority and responsibility to carry out compliance monitoring and enforcement processes, 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 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 Staff shall abide by the confidentiality requirements contained in Section 1500 and **Appendix 4C** of these Rules of Procedure and the delegation agreement
 - 6.5 Contracting with independent consultants or others working for the Regional Entity 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 shall be considered as augmenting Regional Entity Staff under these Rules of Procedure.

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 CMEP 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 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 Regional Entity staff. 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. **Antitrust Provisions** — Each Regional Entity's CMEP activities shall be structured and administered to abide by United States antitrust law and Canadian competition law.
- 9. **Information Submittal** — All Bulk Power System owners, operators, and users responsible for complying with Reliability Standards within the Regional Entity shall submit timely and accurate Documents, data, and information when requested by the Regional Entity or NERC. Where appropriate, Submitting

Entities should comply with the requirements of Section 1500 in submitting such Documents, data, and information. NERC and the Regional Entities shall preserve any mark of confidentiality on information submitted pursuant to Section 1502.1.

- 9.1 Each Regional Entity has the authority to collect the necessary Documents, data, and information to determine compliance and shall develop processes for gathering Documents, data, and information from the Bulk Power System owners, operators, and users the Regional Entity monitors.
 - 9.2 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 403.9 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).
 - 9.3 When required or requested, the Regional Entities shall report information to NERC promptly and in accordance with **Appendix 4C** and other NERC procedures.
 - 9.4 Regional Entities shall notify NERC of noncompliance with Reliability Standards by Registered Entities over which the Regional Entity has compliance monitoring and enforcement authority, in accordance with **Appendix 4C**.
 - 9.5 As requested by the CEA, a Bulk Power System owner, operator, or user found in noncompliance with a Reliability Standard shall submit a Mitigation Plan or conduct Mitigating Activities in accordance with **Appendix 4C**. The Regional Entity Staff shall review and accept the Mitigation Plan in accordance with **Appendix 4C**.
 - 9.6 An officer of a Bulk Power System owner, operator, or user shall certify as accurate all Self-Reports to the Regional Entity, including Documents, data, and information provided with the Self-Report.
 - 9.7 Regional Entities shall develop and implement procedures to verify the compliance information submitted by Bulk Power System owners, operators, and users.
10. **Compliance Monitoring of Bulk Power System Owners, Operators, and Users** — Each Regional Entity will maintain and implement a program for risk-based compliance monitoring, to include Compliance Audits of Bulk Power System owners, operators, and users responsible for complying with Reliability Standards, in accordance with **Appendix 4C**.

11. **Confidentiality of Compliance Monitoring and Enforcement Processes** — All compliance monitoring and enforcement processes, and Documents, data, and information obtained from such processes, are to be non-public and treated 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. 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 such disclosures are in accordance with Section 1500 and Appendix 4C of these Rules of Procedure.
12. **Critical Energy Infrastructure Information and Critical Electric 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 Confidential 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 or Critical Electric Infrastructure Information shall be redacted according to NERC procedures and shall not be released publicly.
13. **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**.
14. **Hearing Process** — Each Regional Entity shall adopt either the Regional Entity Hearing Process (Section 403.15A) or the Consolidated Hearing Process (403.15B) and conduct all hearings pursuant to the selected process. In either case, the selected hearing process shall be 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 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 sector may veto any matter brought before the Hearing Body after recusals.

A Regional Entity may modify its selection of hearing process by giving notice to NERC six (6) months prior to such modification becoming effective. Hearings will be conducted pursuant to the process in effect at the Regional Entity at the time of the submission of the hearing request by the registered entity.

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 or the Consolidated 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.

- 14A. **Regional Entity Hearing Process** — The Regional Entity Hearing Process shall be conducted before a Hearing Body composed of 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.
- 14B. **Consolidated Hearing Process** — The Consolidated Hearing Process shall be conducted before a Hearing Body composed of five members, unless a smaller number is necessary, as discussed below. The Hearing Body will issue a final decision, provided that Canadian provincial regulators may act as the final adjudicator in their respective jurisdictions. Up to two members will be appointed by the Regional Entity from which the case originates. If stakeholder members are appointed, the stakeholders shall not represent the same industry sector. Should a Regional Entity choose to appoint one or no representative, then the NERC Board of Trustees Compliance Committee ("Compliance Committee") will select additional representatives to fill those vacancies. The Compliance Committee will appoint the NERC representatives to the Hearing Body, chosen

among NERC trustees not serving on the Compliance Committee at the time of the request for hearing. The Regional Entity and NERC members appointed to the Hearing Body will appoint an additional member to the Hearing Body, chosen among NERC trustees not serving on the Compliance Committee at the time of the request for hearing or from the Regional Entity from which the case originates. If the Hearing Body does not select a NERC trustee or a regional representative, the Hearing Body will appoint an additional member in accordance with the criteria specified in Appendix 4C, Attachment 2, Section 1.4.3(a). In the event a Regional Entity chooses not to appoint representatives to the Hearing Body and there are not five NERC trustees available to participate on the Hearing Body, as determined by the Compliance Committee, the Hearing Body may be composed of three members (three NERC trustees not serving on the Compliance Committee). The Hearing Body will appoint a Hearing Officer to preside over the hearing.

404. NERC Monitoring of Compliance for Bulk Power System Owners, Operators, or Users

1. **NERC Obligations** —NERC will directly monitor Bulk Power System owners, operators, and users for compliance with 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 CEA 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. **Appeals Process** — Any Bulk Power System owner, operator or user found by NERC 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 NERC's Compliance with the Rules of Procedure

The Compliance and Certification Committee shall monitor NERC's compliance with its Rules of Procedure for the Reliability Standards Development, Compliance Monitoring and Enforcement, and Organization Registration and Certification Programs in accordance with this section and Section 506. The Compliance and Certification Committee's monitoring shall not be used to circumvent the appeals processes established for those programs. The Compliance and Certification Committee shall use independent expert monitors with no conflict of interest, real or perceived. Compliance and Certification Committee findings shall be addressed with the NERC Board of Trustees and other appropriate Board committees.

406. Independent Audits of the Compliance Monitoring and Enforcement Program

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

1. **Effectiveness** — The audit shall evaluate the success and effectiveness of the Compliance Monitoring and Enforcement Program in achieving its mission.
2. **Relationship** — The audit shall evaluate the relationship between NERC and the Regional Entities in implementing the Compliance Monitoring and Enforcement Program and the effectiveness of the program in ensuring reliability.
3. **Final Report Posting** — The final report shall be provided to the NERC Board of Trustees or other appropriate Board committees. NERC will post the final report for public viewing when authorized by the NERC Board of Trustees or other appropriate Board committee.
4. **Response to Recommendations** — If the audit report includes recommendations to improve the Compliance Monitoring and Enforcement Program, the administrators of the Compliance Monitoring and Enforcement Program shall provide a written response and plan to the NERC Board of Trustees within 30 days of the release of the final audit report to the NERC Board of Trustees or other appropriate Board committee. NERC will post the written response and plan for public viewing when authorized by the NERC Board of Trustees or other appropriate Board committee.

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 Hearing Body final decision issued pursuant to Attachment 2 to **Appendix 4C**, to determine if the Regional Entity's determination: a) is supported by a sufficient record compiled by the Regional Entity; b) 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 c) 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 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 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 audit finding, may do so by filing a notice of the challenge with NERC's Director of Enforcement no later than 30 days after issuance of the notice of finding of violation or audit finding. Appeals by Registered Entities or Regional Entities of decisions of 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 30 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** — For matters subject to its review, the 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, NERC 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 Board of Trustees Compliance Committee shall decide the appeal, in writing, based upon the notice of appeal, the record, the response, and any reply. At its discretion, the Board of Trustees Compliance Committee may invite representatives of the Regional Entity or Registered Entity and the NERC Compliance Monitoring and Enforcement Program to appear before the Board of Trustees Compliance Committee. Decisions of the Board of Trustees 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 Hearing Bodies

1. **Time for Appeal** — A Regional Entity acting as the CEA, or an owner, operator, or user of the Bulk Power System, shall be entitled to appeal from a final decision of a 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 Clerk, the Regional Entity, and any other Participants in the Hearing Body proceeding, no later than 21 days after issuance of the final decision of the Hearing Body. The Board of Trustees Compliance Committee shall render its decision within 180 days following the receipt by NERC's Director of Enforcement of the notice of appeal. The Board of Trustees Compliance Committee may extend this deadline for good cause and shall provide written notice of any extension to all Participants.
2. **Contents** — The notice of appeal shall include the full text of the final decision of the 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 Hearing Body.

3. **Response to Notice of Appeal** — Within 21 days after the date the notice of appeal is filed, the Clerk shall file the entire record of the Hearing Body proceeding with NERC’s Director of Enforcement, with a copy to all Participants. Within 35 days after the date of the notice of appeal, all Participants in the proceeding before the 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 party filing the appeal may file a reply to the responses within 7 days.
5. **Decision** — The Board of Trustees Compliance Committee shall decide the appeal, in writing, based upon the notice of appeal, the record of the proceeding before the Hearing Body, the responses, and any reply filed with NERC. The Board of Trustees Compliance Committee shall review the appealed issue(s) under a *de novo* standard. At its discretion, the Board of Trustees Compliance Committee may invite representatives of the entity making the appeal and the other Participants in the proceeding before the Hearing Body to appear before the Board of Trustees Compliance Committee. Decisions of the Board of Trustees 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 Hearing Body granting or denying a motion to intervene in the Hearing Body proceeding. Appeals of decisions of Hearing Bodies granting or denying motions to intervene in 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: a) any action or inaction; b) any agreement reached in resolution of the dispute; or c) 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. 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 Standards*, Appendix 4D to these Rules of Procedure.

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

1. A 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 Compliance Committee, 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 Board of Trustees Compliance Committee appropriate, in accordance with Section 1.5.12 of the Hearing Procedures. All questions certified by a Hearing Body to the Board of Trustees Compliance Committee shall be considered and disposed of by the Board of Trustees Compliance Committee.
2. The Board of Trustees Compliance Committee may accept or reject a certification of a question for decision. If the Board of Trustees Compliance Committee rejects the certified question, it shall issue a written statement that the certification is rejected.
3. If the Board of Trustees Compliance Committee accepts the certification of a question for decision, it shall establish a schedule by which the Participants in the hearing before the Hearing Body may file memoranda and reply memoranda stating their positions as to how the question certified for decision should be decided by the Board of Trustees Compliance Committee. The Board of Trustees Compliance Committee may also request, or provide an opportunity for, the NERC Compliance department, the NERC 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 are filed in accordance with the schedule, the Board of Trustees Compliance Committee shall issue a written decision on the certified question.
4. Upon receiving the Board of Trustees Compliance Committee's written decision on the certified question, the Hearing Body shall proceed to complete the hearing in accordance with the Board of Trustees Compliance Committee's decision.

5. The Board of Trustees 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 Hearing Body Final Decisions that Are Not Appealed

NERC shall review and process all final decisions of 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. 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 Hearing Bodies Granting or Denying Motions to Intervene in Hearing Body Proceedings

1. **Time to Appeal** — An entity may appeal a decision of a Hearing Body under Section 1.4.4 of Attachment 2 of **Appendix C** denying the entity's motion to intervene in a Hearing Body proceeding, and the Regional Entity Staff or any other Participant in the Hearing Body proceeding may appeal a decision of the Hearing Body under Section 1.4.4 of Attachment 2 of **Appendix C** granting or denying a motion to intervene in the Hearing Body proceeding, in either case by filing a notice of appeal with the NERC Director of Enforcement, with copies to the Clerk of the Hearing Body, the Hearing Body, the Hearing Officer, the Regional Entity Staff, and all other Participants in the Hearing Body proceeding, no later than seven (7) days following the date of the 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 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 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 Clerk shall transmit to the NERC Director of Enforcement copies of all pleadings filed in the Hearing Body proceeding on the motion to intervene. Within fourteen (14) days following the date the notice of appeal is filed, the Hearing Body, the Regional Entity Staff, and any other Participants in the 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 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 Board of Trustees Compliance Committee. The NERC Director of Enforcement shall provide copies of the notice of appeal and any responses and replies to the Board of Trustees Compliance Committee. The Board of Trustees Compliance Committee shall issue a written decision on the appeal; provided, that if the Board of Trustees 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 Hearing Body granting or denying the motion to intervene shall stand. The NERC Director of Enforcement shall transmit copies of the Board of Trustees Compliance Committee's decision, or shall provide notice that the forty-five (45) day period has expired with no decision by the Board of Trustees Compliance Committee, to the Clerk, the Hearing Body, the entity filing the notice of appeal, the Regional Entity Staff, and any other Participants in the Hearing Body proceeding that filed responses to the notice of appeal or replies to responses.
5. **Appeal of Board of Trustees Compliance Committee Decision to FERC or Other Applicable Governmental Authority** — Any entity aggrieved by the decision of the Board of Trustees Compliance Committee on an appeal of a Hearing Body decision granting or denying a motion to intervene in a 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 Board of Trustees 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.

Attachment 2

Section 400 Redline

SECTION 400 — COMPLIANCE MONITORING AND 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 (CMEP) 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~~ or other legal instrument approved by ~~the~~ an 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 or the applicable Regional Entity~~ Compliance Enforcement Authority (CEA) such Documents, data, and information as is necessary to monitor and enforce compliance with the Reliability Standards. NERC and the ~~applicable Regional Entity~~ CEA 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~~ CMEP goals and the requirements in this Section 400 provided in these Rules of Procedure.

5. **Program Continuity** — NERC will ensure continuity of compliance monitoring and enforcement within the geographic boundaries of a Regional Entity ~~in the event that if~~ NERC does not have a delegation agreement with a Regional Entity, ~~or the Regional Entity withdraws from or NERC terminates~~ the delegation agreement, or the Regional Entity does not ~~operate its~~ administer the Compliance Monitoring and Enforcement Program CMEP 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. In the circumstances outlined above, the following will apply:~~
1. This monitoring and enforcement ~~will be accomplished by NERC and Compliance Scan be coordinated with~~ 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 in the geographic footprint or for which the Regional Entity has CMEP responsibilities under coordinated oversight of 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 as specified in a termination agreement.
 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~~ consistent with Section 1107 of the Rules of Procedure.
- 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 CMEP 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 ERO and Regional Entity-specific risk elements, ~~to prioritize risks to the reliability of the Bulk Power System. These risk elements and with together with~~ related ~~NERC~~ Reliability Standards and Requirements are to be considered ~~for compliance oversight in the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan~~ to prioritize CMEP activities. NERC ~~coordinates with the Regional Entities to identifies-identify~~ 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~~ ERO CMEP 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~~ are 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 and Regional Entities shall coordinate to maintain a record of each compliance submission, including ~~Self-Reported, Possible, Alleged, and Confirmed Violations of potential noncompliance with~~ approved Reliability Standards; associated Penalties, sanctions, Remedial Action Directives, and settlements; and the status of ~~mitigation actions~~ Mitigating Activities.
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 CMEP 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 ~~disclosure by the Regional Entity CEA and or~~ NERC shall give Bulk Power System owners, operators, and users a reasonable opportunity to demonstrate that ~~information concerning a violation is of any CMEP e~~Confidential Information shall follow Section 1500 ~~before such report is disclosed to the public.~~

11. **Public Posting** — When the affected Bulk Power System owner, operator, or user either agrees with the resolution of a Possible or Alleged Violation(s) of potential noncompliance with a Reliability Standard(s) or a report of a Compliance Audit or Compliance Investigation, or enters into a settlement agreement concerning a potential noncompliance 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 requirements, rules, and regulations of the Applicable Governmental Authority and the confidentiality requirements of these Rules of Procedure, publicly post information on each Confirmed Violations such noncompliance, 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 publicly posted~~ publicly information. 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.~~

11.32 Subject to the disclosure requirements of the Applicable Governmental Authority and redaction of Critical Energy Infrastructure Information, Critical Electric Infrastructure Information, or other Confidential Information, for each ~~Confirmed Violation or settlement relating to a Possible Violation or an Alleged Violation~~ resolved noncompliance submitted to the Applicable Governmental Authority, the public posting shall include: a) the name of any relevant entity, b) the nature, time period, and circumstances of such Possible, Alleged or Confirmed Violation the noncompliance, c) any Mitigation Plan or other Mitigating Activities to be

implemented by the Registered Entity ~~in connection with the Confirmed Violation or settlement~~, and d) 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~~ **Review of Noncompliance** — NERC ~~Compliance Staff~~ shall periodically review and analyze ~~all reports of Possible, Alleged and Confirmed Violations~~ noncompliance to identify trends and other pertinent reliability issues.

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

1. ~~NERC Monitoring Program Oversight~~ — NERC shall ~~have a program to monitor the Compliance Monitoring and Enforcement Program of~~ oversee each Regional Entity that has been delegated authority. The objective of this ~~monitoring program shall be~~ oversight is to ensure that the Regional Entity carries out its obligations under the Compliance Monitoring and Enforcement Program CMEP 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 execution of the Compliance Monitoring and Enforcement Program CMEP. 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~~ metrics, risk-based monitoring activities, and performance reports. Through this oversight, NERC evaluates the Regional Entity's effectiveness and implementation of the CMEP using, among other things, the criteria developed by the NERC Compliance and Certification Committee.
- 1.1 ~~NERC Review of Annual Regional Entity ERO Compliance Monitoring and Enforcement Program CMEP~~ **Implementation Plans** — NERC ~~shall require each and the Regional Entity Entities to submit for review and approval an annual Regional Entity will maintain and update an ERO Compliance Monitoring and Enforcement Program CMEP Implementation Plan. NERC shall review each annual Regional Entity The ERO Compliance Monitoring and Enforcement Program CMEP Implementation Plan and shall accept the plan if it meets NERC requirements and the requirements of the delegation agreement reflects ERO and Regional Entity-specific risk elements that CEAs should prioritize for oversight of Registered Entities.~~
- 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 CMEP~~. The ~~evaluation audit~~ shall be based on these Rules of Procedure, including Appendix 4C, the delegation agreements, directives in effect pursuant to the delegation agreements, ~~the~~ approved annual ~~Regional Entity ERO Compliance Monitoring and Enforcement Program CMEP~~ Implementation Plans, required ~~Compliance Monitoring and Enforcement Program CMEP~~ attributes, and ~~the~~ NERC ~~Compliance Monitoring and Enforcement Program CMEP guidance and~~ procedures. ~~These evaluations audit~~ 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 ~~3.1.64.1.4~~ 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.~~

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

2. **Consistency ~~Among in~~ Regional ~~Implementation of the~~ Compliance Monitoring and Enforcement Programs** — To provide for ~~a consistent Compliance Monitoring and Enforcement Program~~ consistency and fairness of the processes used for Regional Entity findings of compliance and noncompliance and the application of Penalties and sanctions 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 CMEP~~, which is incorporated into these ~~r~~Rules of p~~P~~rocedure as **Appendix 4C**. Any differences in ~~Regional Entity Compliance Monitoring and Enforcement Program~~CMEP methods, including determination of ~~violations noncompliance~~ 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.~~

~~2.32.1~~ NERC shall periodically conduct Regional Entity ~~compliance CMEP~~ manager ~~forums~~meetings. These ~~forums~~meetings shall ~~use the results of Regional Entity Compliance Monitoring and Enforcement Program audits and findings of NERC Compliance Staff to identify and refine~~resolve ~~Regional Entity Compliance Monitoring and Enforcement Program CMEP~~ 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 Noncompliance~~ Disclosure** — NERC shall ~~disclose all Confirmed Violations and maintain as confidential Possible Violations and Alleged Violations, according to the reporting and disclosure~~follow the process in **Appendix 4C**.
5. **Authority to Determine Noncompliance, Levy Penalties and Sanctions, and Issue Remedial Action Directives** — ~~NERC and Regional Entity Compliance Staff~~The CEA 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~~a CEA

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 noncompliance with~~ 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~~Applicable Governmental Authority 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~~CMEP, NERC and Regional Entity ~~staffs~~, 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~~CMEP activities.
 - 8.1 NERC and the Regional Entity shall have in place appropriate codes of conduct and confidentiality agreements for ~~staff and other all participants in Compliance Monitoring and Enforcement Program participants~~CMEP activities.
 - 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.~~

~~8.48.2 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~~A participant's failure to follow the code of conduct or Confidential Information provisions of these Rules of Procedure may result in that person~~-and any member organization with which the individual person is associated may lose access to Confidential Information on a temporary or permanent basis and being~~ subject to appropriate action by the Regional Entity or NERC, including prohibiting participation in future ~~Compliance Monitoring and Enforcement Program~~CMEP activities. Nothing in Section 1500 precludes an entity whose information was improperly disclosed from seeking a remedy in an appropriate court.

9. **Auditor Training** — NERC shall develop and provide training in auditing skills to ~~all people who participate~~participants 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** Implementation of the **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~~CMEP, **Appendix 4C** to these Rules of Procedure, except to the extent of any deviations that are ~~stated in the Regional Entity's delegation agreement~~justified on a case-by-case basis, 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~~CMEP activities shall exhibit independence, meaning the ~~Compliance Monitoring and Enforcement Program~~Regional Entity shall be organized so that its ~~compliance monitoring and enforcement~~CMEP activities are carried out separately from other activities of the Regional Entity. The ~~Compliance Monitoring and Enforcement Program~~CMEP activities 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~~ CMEP 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~~ CMEP, a Regional Entity shall not sub-delegate its ~~Compliance Monitoring and Enforcement Program~~ CMEP 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** — Unless the Regional Entity has elected to participate in the Consolidated Hearing Process, ~~The~~ Regional Entity board or compliance panel reporting directly to the Regional Entity board will designate a Hearing Body (with appropriate recusal procedures) that will be vested with the authority for conducting all compliance hearings, pursuant to the hearing process selected under Section 403.15, 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 sector 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~~ CMEP.
6. **Regional Entity ~~Compliance~~ Staff Independence** — The Regional Entity ~~Compliance~~ Staff, collectively, shall be capable ~~of~~ and required to: a) make all

determinations of compliance and noncompliance; b) ~~and~~ determine Penalties, sanctions, and Remedial Action Directives; and ~~to c)~~ 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; and 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 under these Rules of Procedure.

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~~ CMEP 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 staff. 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.~~
- 98. **Antitrust Provisions** — Each Regional Entity's ~~Compliance Monitoring and Enforcement Program~~ CMEP activities shall be structured and administered to abide by U-~~nited~~ nited S-~~tates~~ tates antitrust law and Canadian competition law.
- 109. **Information Submittal** — All Bulk Power System owners, operators, and users responsible for complying with Reliability Standards within the Regional Entity ~~responsible for complying with Reliability Standards~~ shall submit timely and

accurate Documents, data, and information when requested by the Regional Entity or NERC. Where appropriate, Submitting Entities should comply with the requirements of Section 1500 in submitting such Documents, data, and information. 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 Documents, data, and information to determine compliance and shall develop processes for gathering Documents, data, and information 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.~~10-9~~ 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 noncompliance with NERC~~ Reliability Standards by Registered Entities over which the Regional Entity has compliance monitoring and enforcement authority, in accordance with **Appendix 4C**.
- 10.5 As requested by the CEA, Aa 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~~ or conduct Mitigating Activities in accordance with **Appendix 4C**. 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 Reports to the Regional Entity ~~Compliance Monitoring and Enforcement Program, including~~ Documents, data, and information provided with the Self-Report.
- 10.7 Regional Entities shall develop and implement procedures to verify the compliance information submitted by Bulk Power System owners, operators, and users.

140. Compliance Audits-Monitoring of Bulk Power System Owners, Operators, and Users — Each Regional Entity will maintain and implement a program of

~~proactive for risk-based compliance monitoring, to include~~ 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.~~

121. Confidentiality of Compliance Monitoring and Enforcement Processes — All compliance monitoring and enforcement processes, and Documents, data, 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 are in accordance with Section 1500 and Appendix 4C of these Rules of Procedure.

132. **Critical Energy Infrastructure Information and Critical Electric 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~~ Confidential 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 or Critical Electric Infrastructure Information shall be redacted according to NERC procedures and shall not be released publicly.
143. **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**.
154. **Hearing Process** — Each Regional Entity shall adopt either the Regional Entity Hearing Process (Section 403.15A) or the Consolidated Hearing Process (403.15B) and conduct all hearings pursuant to the selected process. In either case, the selected hearing process shall be 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 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 sector may veto any matter brought before the Hearing Body after recusals.

A Regional Entity may modify its selection of hearing process by giving notice to NERC six (6) months prior to such modification becoming effective. Hearings

will be conducted pursuant to the process in effect at the Regional Entity at the time of the submission of the hearing request by the registered entity.

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 or the Consolidated 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.

154A. Regional Entity Hearing Process — The Regional Entity Hearing Process shall be conducted before a Hearing Body composed of 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.

154B. Consolidated Hearing Process — The Consolidated Hearing Process shall be conducted before a Hearing Body composed of five members, unless a smaller number is necessary, as discussed below. The Hearing Body will issue a final decision, provided that Canadian provincial regulators may act as the final adjudicator in their respective jurisdictions. Up to two members will be appointed by the Regional Entity from which the case originates. If stakeholder members are appointed, the stakeholders shall not represent the same industry sector. Should a Regional Entity choose to appoint one or no representative, then the NERC Board of Trustees Compliance Committee ("Compliance Committee") will select additional representatives to fill those vacancies. The Compliance Committee will appoint the NERC representatives to the Hearing Body, chosen among NERC trustees not serving on the Compliance Committee at the time of the request for hearing. The Regional Entity and NERC members appointed to the Hearing Body will appoint an additional member to the Hearing Body, chosen among NERC trustees not serving on the Compliance Committee at the time of the request for hearing or from the Regional Entity from which the case originates. If the Hearing Body does not select a NERC trustee or a regional representative, the Hearing Body will appoint an additional member in accordance with the criteria specified in Appendix 4C, Attachment 2, Section 1.4.3(a). In the event a Regional Entity chooses not to appoint representatives to the Hearing Body and there are not five NERC trustees available to participate on the Hearing Body, as determined by the Compliance Committee, the Hearing Body may be composed of three members (three NERC trustees not serving on

the Compliance Committee). The Hearing Body will appoint a Hearing Officer to preside over the hearing.

~~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 System Owners, Operators, 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**.~~

1. **In addition, NERC Obligations**—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~~CEA 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.~~

~~3.2. **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's Compliance with the Rules of Procedure

~~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 Compliance and Certification Committee shall monitor NERC's compliance with its Rules of Procedure for the Reliability Standards Development, Compliance Monitoring and Enforcement, and Organization Registration and Certification Programs in accordance with this section and Section 506. The Compliance and Certification Committee's monitoring shall not be used to circumvent the appeals processes established for those programs. The process Compliance and Certification Committee shall use independent expert 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. Compliance and Certification Committee findings shall be addressed with the NERC Board of Trustees and other appropriate Board committees. 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~~ the Compliance Monitoring and Enforcement Program at least once every three years, or more frequently as determined by the NERC Board of Trustees in coordination with the Compliance and Certification Committee. The audit shall be conducted by independent expert auditors as selected by the NERC Board of Trustees. The independent audit shall meet the following minimum requirements and any other requirements established by the NERC Board of Trustees.

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 ~~ies in implementing the~~ 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~~ provided to the NERC Board of Trustees or other appropriate Board committees. NERC will post the final report for public viewing when authorized by the NERC Board of Trustees or other appropriate Board committee.
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 NERC Board of Trustees within 30 days of the release of the final audit report to the NERC Board of Trustees or other appropriate Board committee. NERC will post the written response and plan for public viewing when authorized by the NERC Board of Trustees or other appropriate Board committee.

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 Hearing Body final decision issued pursuant to Attachment 2 to **Appendix 4C**, to determine if the Regional Entity's determination: a) is supported by a sufficient record compiled by the Regional Entity; b) 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 c) 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~~ 30 days after issuance of the notice of finding of violation or audit finding. Appeals by Registered Entities or Regional Entities of decisions of 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~~ 30 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** — For matters subject to its review, ~~the~~ ~~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 Board of Trustees 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 Board of Trustees Compliance Committee may invite representatives of the Regional Entity or Registered Entity; and the NERC Compliance Monitoring and Enforcement Program to appear before the Board of Trustees Compliance Committee. Decisions of the Board of Trustees 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 Hearing Bodies

1. **Time for Appeal** — A Regional Entity acting as the ~~Compliance Enforcement Authority~~ CEA, or an owner, operator, or user of the Bulk Power System, shall be entitled to appeal from a final decision of a 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 Clerk, the Regional Entity, and any other Participants in the Hearing Body proceeding, no later than 21 days after issuance of the final decision of the Hearing Body. The Board of Trustees Compliance Committee shall render its decision within 180 days following the receipt by NERC's Director of Enforcement of the notice of appeal. The Board of Trustees Compliance Committee may extend this deadline for good cause and shall provide written notice of any extension to all Participants.
2. **Contents** — The notice of appeal shall include the full text of the final decision of the 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 Hearing Body.
3. **Response to Notice of Appeal** — Within 21 days after the date the notice of appeal is filed, the Clerk shall file the entire record of the Hearing Body proceeding with NERC's Director of Enforcement, with a copy to all Participants. Within 35 days after the date of the notice of appeal, all Participants in the

Attachment 3

Section 1500 Clean

SECTION 1500 — CONFIDENTIAL INFORMATION

1501. Definitions

1. **Confidential Information** means (i) Confidential Business and Market Information; (ii) Critical Electric Infrastructure Information; (iii) Critical Energy Infrastructure Information; (iv) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (v) work papers, including any records produced for or created in the course of an evaluation or audit; (vi) investigative files, including any records produced for or created in the course of an investigation; or (vii) 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 Electric Infrastructure** means a system or asset of the bulk power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.
4. **Critical Electric Infrastructure Information** means information related to proposed or existing Critical Electric Infrastructure. Such term includes information that qualifies as Critical Energy Infrastructure Information as defined herein.
5. **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.
6. **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.
7. **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, and by adding any labels required by rules or regulations of an Applicable Governmental Authority. 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. Commission regulations regarding access to Critical Electric Infrastructure Information or Critical Energy Infrastructure Information will also apply as appropriate when the Commission is the Submitting 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 provided by NERC.

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. **Resolved Noncompliance** — Nothing in this Section 1500 shall prohibit the disclosure of a noncompliance at the point when the matter is filed with an Applicable Governmental Authority, a Registered Entity admits to the violation, or the Registered Entity and the CEA resolve the noncompliance in accordance with Appendix 4C.

2. **Information Exchange** — NERC and the Regional Entities are authorized to exchange Confidential Information to perform their respective statutory and delegated functions, including, but not limited 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 consistent with the delegation agreement.

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 Confidential Information 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.

Attachment 4

Section 1500 Redline

SECTION 1500 — CONFIDENTIAL INFORMATION

1501. Definitions

1. **Confidential Information** means (i) Confidential Business and Market Information; (ii) Critical ~~Energy-Electric~~ Infrastructure Information; ~~(iii) Critical Energy Infrastructure Information;~~ ~~(iiiiv)~~ 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; ~~(vi)~~ 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 Electric Infrastructure** means a system or asset of the bulk power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.
4. **Critical Electric Infrastructure Information** means information related to proposed or existing Critical Electric Infrastructure. Such term includes information that qualifies as Critical Energy Infrastructure Information as defined herein.
- ~~3.5.~~ **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.
- ~~4.6.~~ **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.
- ~~5.7.~~ **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, and by adding any labels required by rules or regulations of an Applicable Governmental Authority. 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. Commission regulations regarding access to Critical Electric Infrastructure Information or Critical Energy Infrastructure Information will also apply as appropriate when the Commission is the Submitting 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 provided by NERC.~~

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~~ Resolved Noncompliance** — Nothing in this Section 1500 shall prohibit the disclosure of a ~~violation-noncompliance~~ at the point when the matter is filed with an Applicable Governmental Authority ~~as a Notice of Penalty, the "violator"~~ a Registered Entity admits to the violation, or the ~~alleged~~

~~violation~~Registered Entity and ~~NERC or the Regional Entity~~the CEA reach a settlement regarding the violationresolve the noncompliance in accordance with Appendix 4C.

2. **~~Compliance~~Information Exchange** — NERC and the Regional Entities are authorized to exchange Confidential Information ~~related to perform their~~ respective statutory and delegated functions, including, but not limited 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 consistent with the delegation agreement.

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 Confidential 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.

Attachment 5

Appendix 2
Clean



**NORTH AMERICAN ELECTRIC RELIABILITY
CORPORATION**

DEFINITIONS USED IN THE RULES OF PROCEDURE

APPENDIX 2 TO THE RULES OF PROCEDURE

Effective: June 8, 2018

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 potential noncompliance for which the Compliance Enforcement Authority has determined, based on an assessment of the facts and circumstances surrounding the potential noncompliance, that evidence exists to indicate a Registered Entity has violated a Reliability Standard and such violation will be resolved outside of the Self-Logging, Compliance Exception, or FFT processes.

“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.**

“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 or NERC 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 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 *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 Electric Infrastructure Information; (iii) Critical Energy Infrastructure Information; (iv) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (v) work papers, including any records produced for or created in the course of an evaluation or audit; (vi) investigative files, including any records produced for or created in the course of an investigation; or (vii) 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 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.

“Consolidated Hearing Process” means the process pursuant to Section 403.15B used to conduct hearings and issue decisions concerning disputed compliance matters in accordance with Attachment 2, Hearing Procedures, of Appendix 4C.

“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 Electric Infrastructure” means a system or asset of the bulk power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.

“Critical Electric Infrastructure Information” means information related to proposed or existing Critical Electric Infrastructure. Such term includes information that qualifies as Critical Energy Infrastructure Information as defined herein.

“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 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.

“Director of Enforcement” means the Director of Enforcement 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 Enforcement 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 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 Appendix 4C, to resolve minimal or moderate risk, remediated noncompliance 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.

“Frequency Response Sharing Group” means a group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating resources required to jointly meet the sum of the Frequency Response Obligations of its members.**

“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” means the body 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 or NERC to preside over hearings conducted pursuant to Attachment 2, Hearing Procedures, of Appendix 4C; the Hearing Officer shall not be a member of the Hearing Body, 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 ERO CMEP Implementation Plan.

“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 noncompliance with 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,” “NERC Implementation Plan” or “ERO Compliance Monitoring and Enforcement Program (CMEP) Implementation Plan” means the annual ERO CMEP 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 their compliance oversight for individual Registered Entities. The ERO CMEP 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 Preliminary Screen” means a notice issued by the Compliance Enforcement Authority to a Registered Entity that (1) states a potential noncompliance has been identified, (2) provides a brief description of the potential noncompliance, 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 potential noncompliance.

“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.**

“Potential Noncompliance” 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, 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 one that 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 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.

“Regulation Reserve Sharing Group” means a group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply the Regulating Reserve required for all member Balancing Authorities to use in meeting applicable regulating standards.**

“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 potential noncompliance on a log, in accordance with Appendix 4C, in lieu of individually submitted Self-Reports of each potential noncompliance. Self-logged potential noncompliance is exempt from the Preliminary Screen and subsequent reporting and processing rules.

“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 “CMEP 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.**

Attachment 6

Appendix 2 Redline



**NORTH AMERICAN ELECTRIC RELIABILITY
CORPORATION**

DEFINITIONS USED IN THE RULES OF PROCEDURE

APPENDIX 2 TO THE RULES OF PROCEDURE

Effective: June 8, 2018

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~~potential noncompliance for which the Compliance Enforcement Authority has determined, based on an assessment of the facts and circumstances surrounding the ~~Possible Violation~~potential noncompliance, that evidence exists to indicate a Registered Entity has violated a Reliability Standard and such violation will be resolved outside of the Self-Logging, Compliance Exception, or FFT processes.

~~“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 or NERC 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-Electric~~ Infrastructure Information; (iii) Critical Energy Infrastructure Information; ~~(iv)~~ personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; ~~(v)~~ work papers, including any records produced for or created in the course of an evaluation or audit; ~~(vi)~~ investigative files, including any records produced for or created in the course of an investigation; or ~~(vii)~~ 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 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.

“Consolidated Hearing Process” means the process pursuant to Section 403.15B used to conduct hearings and issue decisions concerning disputed compliance matters in accordance with Attachment 2, Hearing Procedures, of Appendix 4C.

“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 Electric Infrastructure” means a system or asset of the bulk power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.

“Critical Electric Infrastructure Information” means information related to proposed or existing Critical Electric Infrastructure. Such term includes information that qualifies as Critical Energy Infrastructure Information as defined herein.

“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.

“Director of Enforcement” means the Director of Enforcement 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 Enforcement 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~~noncompliance 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.

“Frequency Response Sharing Group” means a group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating resources required to jointly meet the sum of the Frequency Response Obligations of its members.**

“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” means the body 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 or NERC to preside over hearings conducted pursuant to Attachment 2, Hearing Procedures, of Appendix 4C; the Hearing Officer shall not be a member of the Hearing Body, 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 [ERO CMEP 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 noncompliance with~~ 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” or “ERO Compliance Monitoring and Enforcement Program (CMEP) Implementation Plan” means the annual ~~NERC-ERO CMEP~~ 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-ERO CMEP~~ 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~~Preliminary Screen” means a notice issued by the Compliance Enforcement Authority to a Registered Entity that (1) states a ~~Possible Violation~~potential noncompliance has been identified, (2) provides a brief description of the ~~Possible Violation~~potential noncompliance, 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~~potential noncompliance.

“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~~Potential Noncompliance” 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~~one that 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.

“Regulation Reserve Sharing Group” means a group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply the Regulating Reserve required for all member Balancing Authorities to use in meeting applicable regulating standards.**

“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~~ potential noncompliance on a log, in accordance with ~~Section 3.5A of~~ Appendix 4C, in lieu of individually submitted Self-Reports of each ~~possible-potential~~ noncompliance. Self-logged potential noncompliance is exempt from the Preliminary Screen and subsequent reporting and processing rules.

“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~~ CMEP 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.**

Attachment 7

Appendix 4C
Clean

North American Electric Reliability Corporation

Compliance Monitoring and Enforcement Program

APPENDIX 4C TO THE RULES OF PROCEDURE

Effective: June 8, 2018

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ATTACHMENT 1 – PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

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COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“CMEP”) 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. The CMEP will also be implemented in Canada and Mexico consistent with laws and agreements in effect with Applicable Governmental Authorities.

Capitalized terms used in this appendix shall have the meanings set forth in Appendix 2 of the NERC Rules of Procedure.

2.0 COMMUNICATION WITH ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS

The Compliance Enforcement Authority (“CEA”) shall require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning CMEP matters. The CEA will designate where Registered Entities are to send CMEP-related correspondence.

3.0 ANNUAL IMPLEMENTATION PLAN

NERC and the Regional Entities will maintain and update an ERO CMEP Implementation Plan, which reflects ERO and Regional Entity-specific risk elements related to the Reliability Standards that CEAs should prioritize for oversight of Registered Entities.

NERC posts the ERO CMEP Implementation Plan on the NERC website on or about November 1 of the calendar year preceding implementation. NERC and the Regional Entities may update and revise the ERO CMEP Implementation Plan during the course of the calendar year of implementation, as necessary, to reflect changing risk elements and prioritization of oversight activities.

NERC, with input from the Regional Entities, stakeholders, and regulators, shall identify risk elements and related NERC Reliability Standards and Requirements to be considered in the annual ERO CMEP Implementation Plan for oversight of Registered Entities. In order to identify risk elements, NERC will consider data including, but not limited to: emerging risks; 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.

4.0 COMPLIANCE MONITORING PROCESSES

Compliance Monitoring and Enforcement Program

The CEA will monitor Registered Entities' compliance with Reliability Standards using the compliance monitoring processes described herein. A CEA will determine the type and frequency of compliance monitoring process to apply based on the Registered Entity's specific risks to the reliability of the Bulk Power System.

If a compliance monitoring process reveals a potential noncompliance with a Reliability Standard, the CEA will conduct a Preliminary Screen of the potential noncompliance in accordance with Section 4.8, except for self-logged potential noncompliance. If the Preliminary Screen results in an affirmative determination with respect to the Preliminary Screen criteria, a potential noncompliance exists and the CEA will proceed in accordance with Section 5.0, Enforcement Actions, except as otherwise authorized in these Rules of Procedure.

Registered Entities found in noncompliance with a Reliability Standard will be required to mitigate the noncompliance.

Compliance monitoring processes require timely information, reports and data from Registered Entities to effectively monitor compliance with Reliability Standards. The CEA 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, 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. Registered Entities responding to a request shall also comply with any obligations regarding such material in rules, regulations, and/or nondisclosure agreements by Applicable Governmental Authorities. If Documents, data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the CEA may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

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 CMEP 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 the CEA. NERC or the CEA may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

4.1 Compliance Audits

All Registered Entities are subject to audit for compliance with Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits may be conducted on the Registered Entity's site, at the discretion of the CEA and to the extent required by the NERC Rules of Procedure. Compliance Audit processes for Compliance Audits conducted in the United States shall be based on professional auditing standards recognized in the United States, which may include for example Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards and standards sanctioned by the Institute of Internal Auditors.

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Compliance Audit processes for Compliance Audits conducted outside the United States may be based on Canadian, Mexican, or other international standards. All Compliance Audits shall be conducted in accordance with guidance from NERC for the Reliability Standards included in the Compliance Audit and consistent with accepted auditing guidelines as approved by NERC. Compliance Guidance documents and Reliability Standard Audit Worksheets will be posted on NERC's website.

4.1.1 Compliance Audit Process

The process for a Compliance Audit is as follows:

- The CEA will provide schedules of planned Compliance Audits and any changes to NERC, FERC and any other Applicable Governmental Authority based upon the agreements in place with the other Applicable Governmental Authority.
- At least two hundred seventy (270) days prior to commencement of a planned Compliance Audit, the CEA will notify the Registered Entity that it plans to audit the Registered Entity.
- At least ninety (90) days prior to commencement of a scheduled Compliance Audit, the CEA 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 Documents, data, and information. If the Compliance Audit team members change from the time of the original notification, the CEA 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 4.1.5.4).
- The Registered Entity provides to the CEA the required Documents, data, and information in the format and by the Required Date specified in the request.
- The Compliance Audit team reviews the submitted Documents, data, and 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 4.1.6.

4.1.2 Frequency of Compliance Audits

The CEA will perform risk-based Compliance Audits as required by the NERC Rules of Procedure and based on criteria established by NERC. In addition to scheduled Compliance Audits, the CEA may initiate an unscheduled Compliance Audit of any Registered Entity at any time if the CEA reasonably determines it to be necessary to ensure the Registered Entity's compliance with Reliability Standards. The CEA shall initiate an unscheduled Compliance Audit if directed by FERC.

The CEA 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

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Compliance Audit, it shall notify the appropriate Regional Entity or Entities prior to or on the same date it notifies the Registered Entity.

The CEA 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.

4.1.3 Scope of Compliance Audits

4.1.3.1 Reliability Standards

The CEA will tailor the scope of the Compliance Audit to include Reliability Standards identified through the NERC-approved risk-based processes, including Inherent Risk Assessments, internal controls, and other inputs. The scope of the Compliance Audit may include Reliability Standards applicable to the Registered Entity whether or not they are identified in the ERO CMEP Implementation Plan.

4.1.3.2 Period Covered

The CEA will indicate the beginning and End Date of the audit period in its notice of the Compliance Audit. The audit period will not begin prior to the End Date of the previous Compliance Audit. The beginning date of the audit period for any given Reliability Standard Requirement may account for factors such as an intervening compliance monitoring process. The End Date will be the date of the notice.

The CEA may request evidence showing compliance for each applicable Reliability Standard as follows:

- For Reliability Standard Requirements specifying activities to be performed on a periodic basis of three calendar years or less: the lesser of (i) three years or (ii) the retention period described in the Reliability Standard.
- For Reliability Standard Requirements specifying activities to be performed on a periodic basis of greater than three calendar years: evidence showing that the required performance was made at the last required interval, with evidence of previous intervals or schedules of performance.

4.1.4 Conduct of Compliance Audits

4.1.4.1 Composition of Compliance Audit Teams

The Compliance Audit team shall be comprised of members whom the CEA 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 CEA

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and is responsible for the conduct of the Compliance Audit and preparation of the Compliance Audit report.

4.1.4.2 Requirements for Compliance Audit Team Members

Each Compliance Audit team member must:

- Be free of conflicts of interests in accordance with the CEA 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 CEA is applicable.
- Successfully complete all required NERC or NERC-approved Regional Entity auditor training.

Prior to the Compliance Audit, the CEA shall provide confirmation to the Registered Entity that all Compliance Audit team members have executed confidentiality agreements or acknowledgements.

4.1.4.3 Compliance Audit Observers and Other Attendees

In any 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, 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 Staff, or representatives of FERC or other Applicable Governmental Authorities who are not Compliance Audit team members identified pursuant to Section 4.1.4.1 are observers.

In addition, at the request of the Registered Entity being audited, the CEA 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.

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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 CEA 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.

4.1.4.4 Registered Entity Objections to Compliance Audit Team

A Registered Entity subject to a Compliance Audit may object to any member of the Compliance Audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Any such objections must be provided in writing to the CEA no later than thirty (30) days prior to the start of the Compliance Audit. This thirty- (30) day requirement shall not apply where a Compliance Audit team member has been appointed less than thirty-five (35) days prior to the start of the Compliance Audit, in which case the Registered Entity must provide any objections to the CEA 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 4.1.3, the Registered Entity must provide any objections to the CEA at least five (5) business days prior to the start of on-site Compliance Audit work for the unscheduled Compliance Audit.

The CEA will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in Section 4.1 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.

4.1.5 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; and identify any Remedial Action Directives, Mitigation Plans, or other Mitigating Activities which have been reviewed during the Compliance Audit. The draft Compliance Audit report may also state areas of concern and recommendations identified by the Compliance Audit team. The draft Compliance Audit report will be provided to the Registered Entity for comment. The Registered Entity has thirty (30) days to comment on the draft Compliance Audit report and to identify Confidential Information proposed for redaction.

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 Compliance Audit report on or before the date the final report is provided to NERC. The CEA provides the final Compliance Audit report to NERC, which in turn provides the report to FERC if the Compliance Audit report pertains to a Registered Entity or to a portion of the Bulk Power

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System over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the Compliance Audit 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 CEA in accordance with Section 9.0, Data Retention and Confidentiality, and CEA requirements.

NERC will publicly post Compliance Audit results, redacting information the CEA deems Confidential Information. This posting of Compliance Audit results will include general Compliance Audit information, such as Registered Entity name, NERC Compliance Registry identification, date of the Compliance Audit, period covered, and any potential noncompliance.

If the Compliance Audit identifies any potential noncompliance with one or more Reliability Standards, the final Compliance Audit results, or pertinent part thereof identifying the potential noncompliance, shall not be released to the public by NERC until final disposition, including (i) the potential noncompliance is dismissed, or (ii) NERC submits a disposition of the potential noncompliance to FERC or other Applicable Governmental Authority.

4.2 Self-Certifications

The CEA may require Registered Entities to self-certify their compliance with Reliability Standards.

4.2.1 Self-Certification Process

The process for Self-Certifications is as follows:

- At least sixty (60) days in advance, the CEA requests the Registered Entity to make a Self-Certification.
- The Registered Entity provides to the CEA the information as specified by the CEA.
- 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 CEA reviews Self-Certifications of noncompliance 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. The CEA may request additional Documents, data, and information, if necessary.
- Receipt of a Self-Certification by the CEA shall not be construed as a finding by the CEA that the Registered Entity is compliant with, not compliant with, subject to, or not subject to, the Reliability Standard Requirement.

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4.3 Spot Checks

Spot Checks may be conducted by the CEA. Spot Checks may be initiated at the discretion of the CEA or as directed by NERC.

4.3.1 Spot Check Process

The process for a Spot Check is as follows:

- The CEA 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. The CEA will allow at least twenty (20) days for the Registered Entity to submit the Documents, data, and information or make it available for review.
- The CEA, as part of the notification package, shall provide the Registered Entity with the names and recent employment histories of the persons who will be conducting the Spot Check. The CEA 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 4.1.4.4. Any such objections must be submitted to the CEA by the later of (i) five (5) business days before the Documents, data, and information being requested by the CEA 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 4.1 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 Documents, data, and information and an on-site review.
- The Registered Entity provides the required Documents, data, and information to the CEA in the format and by the Required Date specified in the request.
- The Spot Check Team conducts a review of the Documents, data, and information submitted to determine compliance with the Reliability Standards Requirements and may request additional Documents, data, and information if necessary.
- The Spot Check team prepares a draft Spot Check report and provides the Registered Entity ten (10) business days to comment on the draft Spot Check 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.
- The CEA provides the final Spot Check report to NERC. NERC provides the Spot Check report to FERC if the Spot Check 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 Spot Check report pertains to a Registered Entity or to a

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portion of the Bulk Power System over which the other Applicable Governmental Authority has jurisdiction. The provision of the Spot Check 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 CEA or by NERC.

4.4 Compliance Investigations

A Compliance Investigation may be initiated at any time by the CEA 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.¹ The Regional Entity shall not be entitled to appeal NERC's decision to lead a Compliance Investigation.

Compliance Investigations are confidential, unless FERC directs that a Compliance Investigation should be public or that certain information obtained in the Compliance Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Investigation will be made public in accordance with Section 1500 of the NERC Rules of Procedure and 18 C.F.R. §39.7(b)(4).

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 to the other Applicable Governmental Authority of any non-public U.S.-related compliance information regarding the matter to be investigated. 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 use 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

¹Examples of situations in which NERC may decide to lead a Compliance Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate Compliance Investigations into matters that may cross Regional Entity boundaries, or (iii) where the Regional Entity determines it cannot conduct the Compliance Investigation.

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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 use 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.

4.4.1 Compliance Investigation Process

The process for a Compliance Investigation is as follows:

- The CEA 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 CEA: (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 CEA after initiation of the Compliance Investigation.
- NERC assigns a NERC staff member to the Compliance Investigation as an observer or team member and to serve as a single point of contact for communications with NERC, and notifies the Registered Entity as to whether the NERC staff member is acting as an observer or as a team member. Within three (3) business days after NERC receives notice of the decision to initiate a Compliance Investigation, NERC will notify FERC and each other Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the Bulk Power System to which the Compliance Investigation relates. Any such notice to FERC or to another Applicable Governmental Authority will be provided in accordance with Section 8.0, Reporting and Disclosure.

The CEA requests Documents, data, and information 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 CEA within the ten (10) business day period. The CEA 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 Documents, data, and information to the CEA in the format and by the Required Date as specified in the request.
- If necessary, the Compliance Investigation may include on-site visits with interviews of the appropriate personnel and review of Documents, data, and information.

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- The CEA 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 CEA'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 CEA 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 CEA reviews Documents, data, and information to determine compliance with the Reliability Standards. The CEA may request additional data and/or information, if necessary.
- The CEA completes the assessment of compliance with the Reliability Standards, 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 CEA 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.

4.5 Self-Reports

Self-Reports are encouraged at the time a Registered Entity becomes aware that it has, or may have, violated a Reliability Standard. A Self-Report will include a risk assessment of the noncompliance, a description of the extent of the noncompliance, the cause of the noncompliance, and the actions that have been taken or will be taken to mitigate the noncompliance, including preventing recurrence.

4.5.1 Self-Report Process

The process for Self-Reports is as follows:

- The Registered Entity provides the Self-Report to the CEA.
- The CEA reviews the Self-Report to evaluate compliance with the Reliability Standards and may request that the Registered Entity provide clarification or additional Documents, data, and information.

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4.5A Self-Logging

Registered Entities found by the CEA 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 CEA 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. The CEA will review the logs at least every three (3) months, with the possibility of extending the review period to six (6) months. The logs will be available for review, upon request, by NERC and Applicable Governmental Authorities. The noncompliance logged in this manner for which there will be no further action shall be exempt from: (i) the Preliminary Screen under Section 4.8; and (ii) reporting requirements under Section 8.0. A potential noncompliance logged in this manner is reviewed by the CEA and does not require further action. The CEA also has discretion to resolve the noncompliance as a Compliance Exception or in accordance with Section 5.0.

4.6 Periodic Data Submittals

The CEA requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard or established by the CEA, or as needed. The CEA 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 CEA will normally issue this request with no less than twenty (20) days advance notice.

4.6.1 Periodic Data Submittals Process

The process for Periodic Data Submittals is as follows:

- The CEA posts the current data reporting schedule on its website and informs Registered Entities of changes and/or updates. The CEA ensures that any required submittal forms for the Reliability Standards being evaluated are maintained and available.
- The Registered Entity provides the required Documents, data, and information to the CEA in the format and by the Required Date specified in the request.
- The CEA reviews the Documents, data, and information to determine compliance with the Reliability Standards and may request additional Documents, data, and information if necessary.
- Receipt of a Periodic Data Submittal by the CEA shall not be construed as a finding by the CEA that the Registered Entity is compliant with, not compliant with, subject to, or not subject to, the Reliability Standard Requirement.

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4.7 Complaints

A CEA may receive Complaints alleging violations of a Reliability Standard. The CEA will notify NERC upon receipt of a Complaint and then review each Complaint it receives to determine if the Complaint provides sufficient basis for initiating another compliance monitoring or enforcement process. NERC retains the discretion to review any Complaint or to direct a Regional Entity to review a Complaint.

The CEA reviewing the Complaint 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 CEA will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, the CEA determines that initiating another compliance monitoring or enforcement process is warranted, the CEA shall conduct that compliance monitoring or enforcement process in accordance with the applicable provisions of Sections 4.0 or 5.0.

4.7.1 Complaint Process

The process for a Complaint is 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 CEA 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 Sections 4.0 or 5.0; otherwise it takes no further action. The CEA notifies the complainant, the Registered Entity, and NERC of the initiation of the compliance monitoring or enforcement process. If the CEA determines that initiation of another compliance monitoring or enforcement process is not warranted, it will notify the complainant and NERC that no further action will be taken.
- The CEA documents the Complaint and the Complaint review, and whether another compliance monitoring or enforcement process is warranted.

4.7.2 Anonymous Complainant Notification Procedure

A complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, and wishes to remain anonymous, can report the information and request that the complainant's identity not be disclosed.² All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed may be investigated by NERC or the

² 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 for additional information).

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Regional Entity following the procedural steps described in Section 4.7.1. Neither NERC nor the Regional Entity shall disclose to any third party the identity of any person or entity reporting information indicating violations of Reliability Standards that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and the Regional Entity. If the CEA determines that initiation of another compliance monitoring and enforcement process is not warranted, it will notify the complainant and NERC that no further action will be taken.

4.8 Preliminary Screen

If the CEA obtains information, through one of the compliance monitoring processes described in this Section 4.0 or by any other means, that indicates a potential noncompliance with a Reliability Standard Requirement, the CEA shall conduct a Preliminary Screen of the potential noncompliance. The Preliminary Screen shall be conducted within ten (10) business days after the potential noncompliance is identified through one of the CMEP processes. All self-logged noncompliance, in accordance with Section 4.5A, shall be exempt from the Preliminary Screen.

A Preliminary Screen shall be limited to determining whether:

- (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 Registered 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 one currently being processed.

4A.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 in Section 5.0 may not be the most appropriate, efficient, or desirable means to achieve the overall objectives of the CMEP for NERC, the CEA, and the Registered Entity.

The Find, Fix, Track and Report, Self-Logging, and Compliance Exception processes are alternatives to the process outlined in Section 5.0.

4A.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

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authorizes expansion of the program. Compliance Exceptions are not included in a Registered Entity's compliance history for penalty purposes. However, a CEA 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 overall compliance history to determine whether a Registered Entity should continue to qualify for Compliance Exception treatment.

Under the Compliance Exception Process, the CEA will review the noncompliance to determine if it poses a minimal risk to the reliability of the Bulk Power System. If the CEA determines the noncompliance poses a minimal risk and is appropriate for Compliance Exception treatment, the CEA will inform the Registered Entity and NERC of this determination. The noncompliance will be considered closed unless it is later determined that: 1) there was a material misrepresentation; or 2) the Registered Entity has not mitigated the noncompliance. If the CEA determines the noncompliance is not appropriate for Compliance Exception treatment, the CEA may pursue other monitoring and enforcement actions.

The Compliance Exception process requires that:

- (1) The Registered Entity mitigates the noncompliance;
- (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;
- (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 resolve the noncompliance.

4A.2 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;
- (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;
- (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 resolve the noncompliance.

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5.0 ENFORCEMENT ACTIONS

The CEA shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the CEA'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 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 CEA 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 NERC 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.

The CEA executes the following process after the Preliminary Screen of a potential noncompliance. However, under the circumstances presented by some potential noncompliance, absolute adherence to the following enforcement process, to the exclusion of other approaches, may not be the most appropriate, efficient, or desirable means to achieve the overall objectives of the CMEP for NERC, the CEA, and the Registered Entity. In such circumstances, the CEA may use other approaches. The Registered Entity shall be entitled to object to the use of any such other approach.

5.1 Assessment of Potential Noncompliance

As soon as practicable after the Preliminary Screen is complete and the CEA identifies a potential noncompliance, the CEA shall conduct an assessment of the facts and circumstances surrounding the potential noncompliance. The CEA shall determine whether evidence exists to indicate the Registered Entity has violated the Reliability Standard Requirement(s) identified, or whether the potential noncompliance should be dismissed. The CEA may consider any additional information to demonstrate that the potential noncompliance should be resolved

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through the Compliance Exception process or the Find, Fix, Track and Report process.

5.2 Notice of Preliminary Screen

After the Preliminary Screen, the CEA shall provide the following information to the Registered Entity and to NERC:

- (i) state that a potential noncompliance by the Registered Entity has been identified;
- (ii) provide a brief description of the potential noncompliance, including the Reliability Standard requirement(s) and, if known, the date(s) involved; and
- (iii) instruct the Registered Entity to retain and preserve all data and records relating to the potential noncompliance.

NERC will notify the Applicable Governmental Authorities pursuant to Section 8.0, Reporting and Disclosure.

5.3 Notification to Registered Entity of Alleged Violation

If the CEA determines, based on an assessment of the facts and circumstances surrounding a potential noncompliance, that evidence exists to indicate a Registered Entity has violated a Reliability Standard and resolution as a Compliance Exception or FFT is not appropriate, the CEA shall notify the Registered Entity of the determination of the Alleged Violation, through an offer of settlement or issuance of a Notice of Alleged Violation and Proposed Penalty or Sanction or similar notification (NAVAPS). The CEA provides the NAVAPS to NERC. The NAVAPS shall be transmitted by the CEA to the Registered Entity by electronic means and shall be effective as of the date of the electronic notification from the CEA. The NAVAPS shall include, at a minimum:

- (i) the Reliability Standard and Requirement(s) the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the CEA believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed Penalty or sanction, if any, determined by the CEA 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 CEA 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

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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 Mitigating Activities while contesting the Alleged Violation and/or the proposed Penalty or sanction, and that submission of Mitigating Activities 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.

Upon receipt of a NAVAPS, NERC shall notify FERC of the Alleged Violation and, if the Alleged Violation pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, shall notify such other Applicable Governmental Authority of the Alleged Violation. 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 NAVAPS within thirty (30) days following the date of the NAVAPS by electronic means, it shall be deemed to have accepted the CEA's determination of violation and Penalty or sanction, and the CEA 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 CEA 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 CEA, 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 CEA shall schedule a conference with the Registered Entity within ten (10) business days after receipt of the response. If the CEA 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 CEA 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.

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If a hearing is requested the CEA shall initiate the hearing process in accordance with **Attachment 2, Hearing Procedures** or the hearing process in effect for the CEA.

5.5 Hearing Process for Compliance Hearings

The CEA hearing process is set forth in **Attachment 2** or the hearing procedure in effect for the CEA.

5.6 Settlement Process

The Registered Entity can request settlement negotiations, and the CEA can offer settlement, at any time, including prior to the issuance of notification of an Alleged Violation; however, the CEA may decline to engage in or to continue settlement negotiations after a potential noncompliance or Alleged Violation becomes a Confirmed Violation in accordance with Section 5.4. The Registered Entity or the CEA may terminate settlement negotiations at any time. Where the CEA has agreed to engage in settlement negotiations, the running of the time period specified in Section 5.4 for the Registered Entity to respond to the notification of Alleged Violation is suspended until settlement negotiations are concluded or terminate. NERC shall be notified of all settlement negotiations and may participate in any settlement negotiations. All settlements will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the CEA shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf.

The CEA 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 CEA 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 CEA 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 CEA 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 CEA of any changes to the settlement that would result in approval, and within five (5) business days the CEA will in turn notify the Registered Entity. If NERC rejects the settlement, the CEA 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

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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 information about 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 or a description of the Mitigating Activities, with any Critical Energy Infrastructure Information, Critical Electric Infrastructure Information, and Confidential Information redacted. Postings of Notices of Confirmed Violations are addressed in Section 8.0.

5.7 NERC Appeal Process

A Registered Entity or the CEA may appeal the decision of a 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 CEA with reasons for its remand, which may include a direction to the CEA to revise the decision. If NERC affirms the decision, the CEA shall issue a Notice of Confirmed Violation to the Registered Entity. If NERC directs the CEA to revise the decision, a Registered Entity that was the subject of the decision or the CEA 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 CEA relied in proposing a Penalty or sanction.

After NERC receives a notification of Confirmed Violation from the CEA, NERC shall review the notification of Confirmed Violation and utilize the information therein to prepare a Notice of Penalty. NERC shall advise the CEA 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 CEA to revise a Penalty determination, in which case the Registered Entity subject to the Penalty, or the CEA, 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 NAVAPS or other notification of enforcement action from the CEA, 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 potential noncompliance or Alleged Violation, NERC shall submit a Notice of Penalty to the Applicable Governmental Authority and provide a copy to the CEA. The CEA 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

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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 potential noncompliance or Alleged Violation pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. Any such filing with FERC or with another Applicable Governmental Authority shall be made in accordance with Section 8.0, Reporting and Disclosure. NERC will include with the Notice of Penalty any statement provided by the Registered Entity as set forth in Sections 5.4 or 5.6.

The Penalty or sanction will be effective upon expiration of the thirty- (30) day period following filing with FERC of the Notice of Penalty (or such longer period as ordered by FERC) or, if FERC decides to review the Penalty or sanction, upon final determination by FERC.

5.10 Completion of Enforcement Action

Following FERC approval of, or expiration of the period for action by FERC on, a Notice of Penalty filed by NERC, the CEA 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 CEA shall issue a notice confirming payment to the Registered Entity. Following the completion by the Registered Entity of all requirements set forth in the Notice of Penalty and any settlement agreement, the CEA shall issue the Registered Entity a Notice of Completion of Enforcement Action.

If the CEA dismisses or disposes of a potential noncompliance or Alleged Violation that does not become a Confirmed Violation, the CEA 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 CEA.

The Notice of Completion of Enforcement Action shall address any data retention directives 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 CEA, 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 potential noncompliance requests a determination by the CEA that another entity(ies) was responsible, in whole or in part, for actions

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or omissions that caused or contributed to the noncompliance identified in the Notice of potential noncompliance.

The procedures in this section apply only where an ISO/RTO requests a determination that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the noncompliance identified in a Notice of potential noncompliance 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 CEA to make a determination in an enforcement action that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to a violation (if confirmed) of a Reliability Standard for which the ISO/RTO has received a Notice of potential noncompliance, the ISO/RTO shall, no later than ten (10) business days after receiving the Notice or such additional period as the CEA may permit for good cause shown (i) submit a written request to the CEA and (ii) issue a notice to the specified other entity(ies), each conforming to the requirements of the following two paragraphs of this section.

The ISO/RTO's written request to the CEA shall contain:

- (1) the CEA's identification number for the Notice of potential noncompliance;
- (2) a statement that the ISO/RTO is requesting that the CEA 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 potential noncompliance;
- (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 potential noncompliance. As the enforcement action proceeds, the ISO/RTO may

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supplement, expand or modify this explanation as additional information becomes available during the course of the enforcement action.

The ISO/RTO's notice to the specified other entity(ies) shall contain the following information:

- (1) The name of the specified other entity, and the name, telephone number and e-mail address of the specified other entity's contact person (person to whom the notice is being sent);
- (2) A statement that the ISO/RTO has received a Notice of potential noncompliance from the CEA, the CEA's identification number for the Notice of potential noncompliance, and contact information for the CEA;
- (3) A statement that the ISO/RTO has requested the CEA 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 potential noncompliance, 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 CEA determines the specified other entity was responsible, in whole or in part, for actions or omissions that caused or contributed to the noncompliance identified in the Notice of potential noncompliance.
- (4) A statement that the specified other entity should promptly contact the CEA for further information and to request to participate in the enforcement action relating to the Notice of potential noncompliance.

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 CEA 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 CEA 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 CEA 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 CMEP and of Section 1500 of the NERC Rules of Procedure) that must be executed to obtain a copy of the Notice of potential noncompliance and a copy of the ISO/RTO's written request to the CEA 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 potential noncompliance. In addition, the CEA 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 CEA stating why the specified other entity is not participating and providing any facts or information the other entity wishes to provide concerning

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the occurrence(s) that are the subject of the Notice of potential noncompliance, and (ii) whether or not the specified other entity elects to participate in the enforcement action, the CEA may determine that the specified other entity was responsible, in whole or in part, for actions or omissions that caused or contributed to the noncompliance identified in the Notice of potential noncompliance.

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 potential noncompliance if the other entity(ies) submits a written request to participate to the CEA and executes a non-disclosure agreement in the form provided by the CEA. 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 CEA and the ISO/RTO, or (ii) the date that the CEA issues a Notice of Confirmed Violation to the ISO/RTO. The CEA 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 CEA 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 CEA shall issue a notice to the ISO/RTO and to the specified other entity stating that the specified other entity is allowed to participate in the enforcement action. The CEA's notice that the specified other entity is allowed to participate in the enforcement action shall include a copy of the Notice of potential noncompliance 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 CEA 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 CMEP.

If the ISO/RTO fails to meet the requirements of Section 5.11.1, the CEA shall issue a notice to the ISO/RTO and to the specified other entity(ies) stating that the CEA 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 potential noncompliance.

5.11.3 CEA'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 noncompliance identified in the Notice of potential noncompliance issued to the ISO/RTO, the CEA shall provide to NERC (i) a copy of the ISO/RTO's written request for a determination that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the noncompliance

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identified in the Notice of potential noncompliance, and (ii) the ISO/RTO's notice to the specified other entity(ies).

(b) On the same day that the CEA 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 CEA 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 CEA'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 noncompliance that is the subject of the Notice of potential noncompliance 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 noncompliance identified in the Notice of potential noncompliance, the CEA 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 CEA's determination shall only address whether or not the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation, and shall not address whether all or a part of any monetary Penalty imposed on the ISO/RTO for the violation should be allocated or assigned to the specified other entity(ies).

The specified other entity(ies) shall be entitled to request a hearing on the CEA's determination pursuant to Section 1.3.1 of Attachment 2 of this Appendix 4C, and to appeal the Hearing Body's decision pursuant to Section 1.7.10 of Attachment 2 to this Appendix 4C, as though the specified other entity(ies) were a Registered Entity(ies).

5.11.5 Procedure Where ISO/RTO Members Are Allowed to Directly Assign Monetary Penalties for Violations of Reliability Standards to the ISO/RTO

If an ISO/RTO's tariffs, agreement, or other relevant governance documents establish procedures that allow members of the ISO/RTO to directly assign to the ISO/RTO monetary Penalties imposed on the ISO/RTO member(s) for violations of Reliability Standards, then the ISO/RTO members may follow the same requirements of Sections 5.11.1 and 5.11.2 as are applicable to an ISO/RTO under those sections, and the ISO/RTO shall be afforded the same rights to participate in the enforcement action as a specified other entity under Sections 5.11.1, 5.11.2, and 5.11.4, subject to the same requirements and conditions specified in those sections. In such circumstances, the ISO/RTO shall be deemed to be a "specified other entity" for purposes of this Section.

5.11.6 Obligation to Pay Monetary Penalty

(a) The ISO/RTO shall be obligated and responsible to pay any monetary Penalty imposed by the CEA on the ISO/RTO for violation of a Reliability Standard, in accordance with Section 5.10,

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(i) regardless of whether the CEA has made a determination that a specified other entity was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation, (ii) without regard to the timing of any separate proceeding(s) in which the ISO/RTO seeks to allocate some or all of the monetary Penalty to a specified other entity(ies), and (iii) without regard to whether or when the ISO/RTO receives payment from the specified other entity(ies).

(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 CEA 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 NONCOMPLIANCE WITH RELIABILITY STANDARDS

6.1 Requirement for Submission of Mitigation

A Registered Entity found to be in noncompliance with a Reliability Standard shall file with the CEA a description of how the noncompliance will be or has been mitigated. The CEA may request that the Registered Entity submit a proposed Mitigation Plan. A Registered Entity's submittal of a Mitigation Plan does not constitute an admission of a 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 potential noncompliance(s) with Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the potential noncompliance(s).
- The Registered Entity's proposed Mitigating Activities to correct the potential noncompliance(s).
- The Registered Entity's proposed Mitigating Activities to correct the cause of the potential noncompliance(s).
- The Registered Entity's proposed Mitigating Activities to prevent recurrence of the potential noncompliance(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.

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- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the potential noncompliance(s) corrected.
- A timeline for completion of implementation milestones. The CEA may agree to a mutually acceptable timeline for completion of milestones, typically no more than three (3) months for each milestone. The CEA maintains discretion to adjust the timeline based on factors such as the complexity of the Mitigating Activities or the risk posed to the Bulk Power System. 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 Submission of Mitigation Plans

A Mitigation Plan 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 affirming the violation(s), unless the Registered Entity elects to appeal the Hearing Body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or Penalty or sanction; such submission shall not be deemed an admission of a violation or the appropriateness of a Penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the Regional Entity acting as CEA or the Hearing Body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the CEA before the Hearing Body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

6.4 Review and Acceptance or Rejection of Proposed Mitigation Plans

Unless the time period is extended by the CEA, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within sixty (60) 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 CEA shall, within the initial or extended review period, notify the Registered Entity (and NERC if NERC is not the CEA) that the review period is being extended and identify the date by which the CEA will complete its review of the Mitigation Plan. The CEA's extension notice shall also state that if the CEA has not issued a notice by the end of the extended review period either stating that the CEA accepts or rejects the proposed Mitigation Plan or further extending the CEA's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted.

If the CEA rejects a Mitigation Plan, the CEA 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 CEA will notify the Registered Entity within

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thirty (30) days after receipt of a revised Mitigation Plan whether the CEA 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. The CEA may notify the Registered Entity of extension of the review period. If the CEA does not provide notification to the Registered Entity within 30 days after receipt of a revised Mitigation Plan, the revised Mitigation Plan will be deemed accepted. 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 CEA a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the CEA 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 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 sixty (60) 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.

6.5 Implementation of Mitigation Plans

The Mitigation Plan shall be implemented in accordance with its terms. At the CEA's discretion, the implementation deadline may be extended for good cause including, but not limited to: (i) operational issues such as the inability to schedule an outage to complete Mitigating Activities, and (ii) construction requirements in the Mitigation Plan that require longer to complete than originally anticipated. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the implementation of the accepted Mitigation Plan will be recorded by the CEA with associated sanctions or Penalties. The CEA 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 CEA will notify the Registered Entity that any findings of violations of the applicable Reliability Standards during the period that the accepted Mitigation Plan was being implemented have been waived and no Penalties or sanctions will apply. The CEA will also notify NERC of any such waivers of violations of Reliability Standards.

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A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the CEA before the original milestone or completion date. The CEA may accept a request for an extension after the original milestone or completion date for good cause. The CEA may accept a request for an extension or modification of a Mitigation Plan, including milestone completion dates, if the CEA 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 CEA or the Hearing Body in accordance with Section 6.4, 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.

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.

6.6 Completion/Confirmation of Implementation of Mitigation Plans

The Registered Entity shall provide updates as requested by the CEA on the progress of the Mitigation Plan. The CEA will track the Mitigation Plan to completion and may conduct on-site visits and review status during a Compliance Audit or other compliance monitoring activity to monitor Mitigating Activities implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to the CEA certification that all required actions described in the Mitigation Plan have been completed and shall retain Documents, data, and information sufficient for the CEA to verify completion. As necessary, the CEA may request such Documents, data, and information and conduct follow-up assessments, on-site or other Spot Checks, or Compliance Audits 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 CEA. In addition, the CEA 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 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 CEA will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the noncompliance.

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- Monitoring method by which the noncompliance was detected, i.e., Self-Certification, Self-Report, Compliance Audit, Compliance Investigation, Complaint, etc.
- Date(s) of Notice of potential noncompliance 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 Documents, data, and information submitted as evidence of completion.

7.0 REMEDIAL ACTION DIRECTIVES

The CEA 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 potential noncompliance with a Reliability Standard. The CEA will specify whether a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, the CEA 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 potential noncompliance with Reliability Standards that is 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 CEA 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 CEA; 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 CEA 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

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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 CEA will monitor implementation of Remedial Action Directives as necessary to verify compliance.

The CEA 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 CEA 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 CEA 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, or otherwise make available through a common database, electronic reports containing current information concerning the information listed below. NERC will work with Regional Entities to specify form, content, timing, and method of submitting reports and notices.

- (1) The status of the review and assessment of all potential noncompliance with Reliability Standards by Registered Entities,
- (2) The potential impact of any potential noncompliance on the reliability of the Bulk Power System,
- (3) Sanctions and Penalties,
- (4) Remedial Action Directives imposed,
- (5) Mitigation Plans, and
- (6) The name of a Regional Entity staff person knowledgeable about the information to serve as a point of contact.

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8.2 Reporting to Applicable Governmental Authorities and Public Disclosure

Within two (2) business days of receiving a notification from a CEA of a potential noncompliance or the issuance of a NAVAPS, NERC shall notify FERC.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to United States 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.

Where the notification or NAVAPS pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, NERC shall also notify such other Applicable Governmental Authority; provided, that NERC will not disclose any non-public United States 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-United States 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 CMEP, 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 Reliability Standard.

NERC will publicly post on its website, in accordance with FERC requirements, rules, and regulations, each Notice of Penalty for violation of non-CIP Reliability Standards, with any Critical Energy Infrastructure Information, Critical Electric Infrastructure Information, or other Confidential Information redacted (unless posting of the Critical Energy Infrastructure Information, Critical Electric 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 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 noncompliance 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.

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9.0 DATA RETENTION AND CONFIDENTIALITY

9.1 Records Management

The CEA records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the CMEP, to ensure verification of compliance with appropriate business, regulatory, and legal requirements. The policy shall allow for the maintenance of records as required to implement the CMEP.

9.2 Retention Requirements

The CEA records management policy will address Documents, data, and information 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, and Complaints, as well as a hearing process. Where technically feasible, such Documents, data, and information will be retained for the longer of (i) five (5) years or (ii) any retention period specified by FERC or another Applicable Governmental Authority. To meet these retention requirements for Documents, data, and information that remain in the possession of the Registered Entity at the end of the CMEP activity, the Registered Entity must comply with any retention direction provided by the CEA during any CMEP activity. The obligation to retain Documents, data, and information commences upon the initiation of the CMEP activity that produces the Documents, data, and information. If the Documents, data, and information are material to the resolution of a noncompliance or controversy, the retention period for such Documents, data and information shall not commence until after the noncompliance or controversy is resolved.

Upon request from NERC, Regional Entities will provide to NERC copies of such Documents, data, and information. NERC will retain the Documents, data, and information in order to maintain a record of activity under the CMEP. In providing the Documents, data, and information to NERC, the Regional Entity shall preserve any mark of confidentiality.

9.3 Confidentiality

9.3.1 Definitions

Documents, data, and information generated or received pursuant to CMEP 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,” “Critical Electric Infrastructure Information,” and “Critical Infrastructure” shall have the meanings stated in Appendix 2 to the NERC Rules of Procedure.

9.3.2 Protection of Confidential Information

The CEA personnel (including any contractors, consultants and industry subject matter experts) and committee members, and participants in CMEP 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 Electric Infrastructure Information and Critical Energy Infrastructure Information

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The CEA will keep confidential all Critical Electric Infrastructure Information and Critical Energy Infrastructure Information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be Critical Electric Infrastructure Information or Critical Energy Infrastructure Information shall be redacted as needed, in accordance with Section 1500 of the NERC Rules of Procedure, and shall not be released publicly.

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ATTACHMENT 1

PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

FERC's regulations at 18 C.F.R §39.2(d) provide that each user, owner, or operator of the Bulk Power System within the United States (other than Alaska and Hawaii) shall provide FERC, the ERO, and the applicable Regional Entity such information as is necessary to implement section 215 of the Federal Power Act as determined by FERC and set out in the rules of the ERO and each Regional Entity. In order to enforce this requirement, if Documents, data, information, or other reports (including Mitigation Plans) requested from a Registered Entity in connection with a CMEP activity are not received by the Required Date, the CEA may sequentially execute the following steps for each Reliability Standard Requirement for which the CEA has requested Documents, 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 CEA may afford the Registered Entity reasonable additional time to submit the Documents, data, information, or report due to the scope or difficulty of the request or requirement for Documents, data, information, or reports, the amount of the Documents, data, information, or reports requested or required, or the form in which the Documents, data, information, or other reports has been requested or is required to be provided.

Step 1: The CEA will issue a notification to the Registered Entity's designated contact for reliability matters, identifying the Documents, 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 Documents, data, information, or report, or contact the CEA with a proposed date by which the Registered Entity will provide the Documents, data, information, or report. If the CEA agrees with the Registered Entity on a revised date by which the Registered Entity will provide the Documents, 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 CEA 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 Documents, data, information, or report is not received within ten (10) business days, the CEA 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 Documents, data, information, or report relates.

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Step 3: If the Registered Entity fails to produce the requested or required Documents, 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 CEA 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 Documents, 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 a request for Documents, data, information, or reports in connection with a CMEP activity or does not work in good faith with the CEA in connection with a CMEP activity. This process is not intended to apply where the Registered Entity responds, prior to the Required Date, to the initial request or requirement for Documents, data, information, or reports with requests for: i) clarification, definition of scope, or similar questions concerning the request or requirement for Documents, data, information, or reports, or requests, prior to the Required Date, or ii) additional time to respond based on a) the scope or difficulty of the request or requirement for Documents, data, information, or reports, b) the amount or extent of the Documents, data, information, or reports requested or required, or c) the form in which the Documents, data, information, or report is to be provided, and works with the CEA in good faith to respond to the request or requirement for Documents, data, information, or reports, as modified if appropriate by the CEA based on questions raised by the Registered Entity.

ATTACHMENT 2 - HEARING PROCEDURES

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ATTACHMENT 2 - HEARING PROCEDURES

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

- (a) The provisions set forth in this **Attachment 2** (“Hearing Procedures”) shall apply to and govern practice and procedure before the CEA in hearings in the United States conducted into:
- (1) whether Registered Entities within the CEA’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. Where the Hearing Body established under Rules of Procedure Section 403.15A 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 sectors may control, and no single industry sector may veto, any decision by the Hearing Body on any matter brought before it for decision. Where the Hearing Body established under Rules of Procedure Section 403.15A is comprised solely of independent members and an independent hearing Officer, decisions shall require a majority vote. For the Hearing Body established under Rules of Procedure Section 403.15B, 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 CEA have entered into a settlement agreement resolving the matters that are the subject of the hearing, the hearing shall be terminated by the Hearing Body and no further proceedings shall be conducted 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 CEA'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 CEA 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 CEA'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) 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 [Intentionally Left Blank]

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 made to a Hearing Body established under Rules of Procedure Section 403.15A (Regional Entity Hearing Process) or 403.15B (Consolidated Hearing Process) shall be made with the Clerk.

The Clerk's office will be open during the regular business hours of the CEA or NERC, each day except Saturday, Sunday, legal holidays and any other day declared by the CEA or 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 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.

(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 Enforcement and the Registered Entity's compliance contact as registered with the CEA, 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 NERC at the time that the CEA transmits 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 CEA or NERC 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 CEA 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 CEA or NERC 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

Except as provided below, all hearings and oral arguments shall be held at the principal office of the CEA unless the Hearing Officer or Hearing Body designates a different location.

If the CEA has adopted the Consolidated Hearing Process under Rules of Procedure Section 403.15B, all hearings and oral arguments shall be held at the principal office of the CEA unless NERC, the CEA, and the Registered Entity agree to 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 CEA, 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 CEA 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 CMEP, 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.

(h) If the CEA has adopted the Consolidated Hearing Process, the Compliance Staff must forward a hearing request to NERC within three (3) business days of receiving the request.

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 issue a final order within one hundred twenty (120) days of the notice of hearing. The Hearing Body may extend this deadline for good cause and shall provide written notice of any extension to all Participants.

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) A Hearing Officer shall 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 Hearing Officer 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 sectors may control, and no single industry sector 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 applicable conflict of interest policy of the CEA, and/or that of NERC under the Consolidated Hearing Process.

(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 CEA, or NERC under the

Consolidated Hearing Process, 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 potential noncompliance, 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 CEA for purposes of establishing the hearing forum, or between NERC, the Regional Entity, and the Registered Entity for purposes of establishing the hearing forum under the Consolidated Hearing Process.
- (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 CEA 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 CEA 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 CEA or NERC, or constitutes attorney work product of counsel for the CEA or NERC (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 CEA, 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 CEA, 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 CEA 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 CEA'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 CEA's offices, other than copies of Documents made available by the CEA 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 CEA.

(g) Failure to Make Documents Available — Harmless Error

In the event that a Document required to be made available to a Participant pursuant to this Section is not made available by Staff, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to make the Document available was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff to produce a Document, the burden shall be on Staff to show that such failure was harmless error. The Hearing Officer, or, upon review, the Hearing Body shall determine whether the failure to make the Document available was harmless error.

1.5.8 Other Discovery Procedures

(a) In addition to the production of Documents by Staff for inspection and copying by Respondent and other Participants pursuant to Section 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 409 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.409, including data requests, written interrogatories and requests for production of Documents or things, depositions by oral examination, requests for inspection of Documents and other property, requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce Documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing.

(b) Unless otherwise directed by the Hearing Officer or Hearing Body upon motion by a Participant, or by the Hearing Officer, or by the Hearing Body on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.410 and 385.510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- (1) The provisions of subsections (d), (e) and (f) of Section 1.5.7 shall apply to any such discovery.
- (2) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(d)(2)) shall not be applicable.
- (3) The Hearing Officer and the Hearing Body have the authority to issue orders to compel the appearance by or production of Documents or information by, only a Person that (i) is a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the Hearing Body do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide Documents, information or testimony.
- (4) References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide Documents, information or testimony.

- (5) References to the “Commission” in Rules 402 through 410 and 510(e) shall be to FERC except as follows:
- (i) the references in Rules 402(a), 404(b)(1) and 405(b), the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the Hearing Body,
 - (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and
 - (iii) the reference in Rule 510(e)(3) shall be deemed to be to the Hearing Officer or Hearing Body.
- (6) Unless otherwise ordered by the Hearing Officer or Hearing Body, a data request, set of interrogatories, request for production of Documents or things, request for inspection of Documents or other property, request for admissions, or order to produce or provide Documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or date of the order.
- (7) A list of withheld Documents, if any, shall be provided by any Participant required to produce Documents, at the time the Documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the Documents. Upon review, for good cause shown, the Hearing Officer may order the Participant to make any Document withheld available to any other Participant or Participants for inspection and copying.
- (8) In the event a Document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the Document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a Document or information, the burden shall be on the Participant that failed to produce or provide the Document or information to show that such failure was harmless error. The Hearing Officer or, upon review, the Hearing Body shall determine whether the failure to make the Document available was harmless error.
- (9) Unless otherwise ordered by the Hearing Officer or Hearing Body, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date the request for hearing was filed.
- (10) Notwithstanding subsections (b)(6) and (b)(9), however, if the shortened hearing procedure in Section 1.3.4 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are

consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.

(c) The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives:

- (1) full disclosure of all relevant Documents and information;
- (2) the exercise of due diligence in the conduct of discovery by a Participant; and
- (3) disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

(a) Unless the Hearing Officer orders otherwise and with the exception of (i) any adverse Participant examination pursuant to Section 1.6.16 and (ii) the testimony and Documents of a non-Participant provided pursuant to an order to produce or provide Documents, information or testimony, all witness direct testimony to be submitted in an Evidentiary Hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the Evidentiary Hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended.

(b) Where a Participant intends to use a Document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (other than Documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce Documents), the Participant intending to use such Document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at a Testimonial Hearing.

(c) Compliance Staff shall file the Documents it intends to offer into evidence as its direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, first. The Registered Entity shall file the Documents it intends to offer into evidence as its direct case, which also may be responsive to Staff's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, second. Staff shall file as its rebuttal case the Documents it intends to offer into evidence in response to the Registered Entity's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, third.

(d) If appropriate due to the number and/or complexity of the issues, the Hearing Officer may allow for the Registered Entity to submit a rebuttal case that responds to Staff's rebuttal case, in which event the Hearing Officer shall also allow Staff to submit a surrebuttal case that responds to the Registered Entity's rebuttal case.

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

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

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

1.5.10 Protective Orders

(a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of any non-Participant ordered to produce Documents, information or testimony, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.

(b) The following types of information will be considered entitled to protection through a protective order:

- (i) Confidential Business and Market Information, including information that is proprietary, commercially valuable, or competitively sensitive;
- (ii) Critical Electric Infrastructure Information;
- (iii) Critical Energy Infrastructure Information;
- (iv) information related to a Cyber Security Incident;
- (v) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information;
- (vi) audit work papers;
- (vii) investigative files or Documents that would disclose investigative techniques of Staff, any CEA, 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 Compliance Committee

(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 Compliance Committee 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 Compliance Committee 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 Compliance Committee, 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 Compliance Committee, 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 Compliance Committee.

(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 Compliance Committee 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 Compliance Committee appropriate. If the Hearing Body determines that the proposed question should be certified to the Board of Trustees Compliance Committee, 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 Compliance Committee may decide to reject a proposed certification from a Hearing Body.

(f) If the Board of Trustees Compliance Committee 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 Compliance Committee's 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 CEA'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 CEA.
- (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 CEA.
- (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 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 Hearing Body may extend this deadline for good cause and shall provide written notice of any extension to all Participants. 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 CEA, 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 CEA's settlement procedures, provided, that (i) the CEA may decline to engage in or continue settlement negotiations after a potential noncompliance or Alleged Violation becomes a Confirmed Violation, and (ii) the CEA, 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 CEA 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 CEA 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 CEA within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

(c) If the CEA has adopted the Consolidated Hearing Process under Rules of Procedure Section 403.15B, it must forward a request for a Remedial Action Directive hearing to NERC within one (1) business day of receiving the request.

(d) 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.

Attachment 8

Appendix 4C
Redline

North American Electric Reliability Corporation

Compliance Monitoring and Enforcement Program

APPENDIX 4C TO THE RULES OF PROCEDURE

Effective: June 8, 2018

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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~~CMEP”) 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. ~~The Compliance Monitoring and Enforcement Programs~~CMEP also will also be implemented in Canada and Mexico consistent with ~~Canadian~~ laws and agreements in effect with Applicable Governmental Authorities.

1.1.1 Definitions

Capitalized terms used in this ~~Compliance Program~~appendix shall have the meanings set forth in Appendix 2 of the NERC Rules of Procedure.

2.0 ~~IDENTIFICATION OF COMMUNICATION WITH~~ 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 The Compliance Enforcement Authority (“CEA”) shall require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance-CMEP matters. NERC and the applicable Regional Entity~~The CEA will designate where Registered Entities are to send ~~information, data, Mitigation Plans, or any other compliance-CMEP~~related correspondence.

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~~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 ANNUAL IMPLEMENTATION PLANS

~~NERC Compliance Monitoring and Enforcement Program Implementation Plan~~

~~NERC and the Regional Entities will maintain and update thean NERCERO CMEP Implementation Plan, to be carried out by Compliance Enforcement Authorities in the performance of which reflects ERO and Regional Entity-specific 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 that CEAs should prioritize for oversight by the Compliance Enforcement Authority of Registered Entities.~~

~~NERC posts Tthe NERCERO CMEP Implementation Plan will be posted on the NERC website on or about November 1 of the calendar year preceding implementation. NERC and the Regional Entities may update and revise the NERCERO CMEP Implementation Plan during the course of the calendar year of implementation, as necessary, to reflect changing risk elements and prioritization of oversight activities.~~

~~NERC, with input from the Regional Entities, stakeholders, and regulators, shall identify risk elements and related NERC Reliability Standards and Requirements to be considered in the annual ERO CMEP Implementation Plan for oversight of Registered Entities. In order to identify risk elements, NERC will consider data including, but not limited to: emerging risks; 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.~~

~~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.~~

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3.04.0 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~~CEA will monitor Registered Entities' compliance with Reliability Standards using the compliance monitoring processes described ~~in this Section~~herein. A ~~Compliance Enforcement Authority~~CEA will determine the type and frequency of ~~application of the compliance monitoring tools appropriate for a particular Registered Entity~~process to apply 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~~CEA will conduct a Preliminary Screen of the potential noncompliance in accordance with Section ~~34.8, except for self-logged potential noncompliance~~. ~~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~~potential noncompliance exists and the ~~Compliance Enforcement Authority~~CEA 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 noncompliance with~~ a Reliability Standard will be required to mitigate the ~~violation noncompliance regardless of any enforcement actions taken~~.

~~The e~~Compliance monitoring processes ~~in this Section~~ require timely information, reports and data from Registered Entities to effectively monitor compliance with Reliability Standards. The ~~Compliance Enforcement Authority~~CEA 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 if~~ the information were placed into the public domain. Registered Entities responding to a request shall also comply with any obligations regarding such material in rules, regulations, and/or nondisclosure agreements by Applicable Governmental Authorities. If Documents, data, information or other reports to determine compliance requested from a Registered Entity are not

Compliance Monitoring and Enforcement Program

received by the Required Date, the ~~Compliance Enforcement Authority~~CEA 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~~CMEP 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~~the CEA. NERC or the ~~Compliance Enforcement Authority~~CEA may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

3.1.14.1 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 may be~~ conducted on the Registered Entity's site, at the discretion of the CEA and to the extent required by the NERC Rules 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 ~~United States~~, 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 ~~United States~~ may be based on Canadian, Mexican, or other international standards. All Compliance Audits shall be conducted in accordance with ~~audit guides established~~guidance from NERC for the Reliability Standards included in the Compliance Audit, and consistent with accepted auditing guidelines as approved by NERC. ~~The audit guides~~Compliance Guidance documents and Reliability Standard Audit Worksheets will be posted on NERC's website.

3.1.14.1.1 Compliance Audit Process Steps

The process ~~steps~~ for a Compliance Audit ~~are is~~ as follows:

- The ~~Compliance Enforcement Authority~~CEA ~~posts the Annual Audit Plan (developed in coordination with NERC). The Compliance Enforcement Authority~~CEA provides ~~additional information to the Compliance Audit Participants, including Compliance Audit materials, coordinating agendas and changes to the Compliance Audit schedule as required. NERC or the Regional Entity will~~ provides the Compliance Audit schedules of planned Compliance Audits and any changes to NERC, FERC and ~~to~~ any other Applicable Governmental Authority based upon the agreements in place with the other Applicable Governmental Authority.
- At least two hundred seventy (270) days prior to commencement of a planned Compliance Audit, the CEA will notify the Registered Entity that it plans to audit the Registered Entity.

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- At least ninety (90) days prior to commencement of a ~~regularly~~-scheduled Compliance Audit, the ~~Compliance Enforcement Authority~~CEA 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 Documents, data, and information ~~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~~CEA 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 34.1.5.4).
- The Registered Entity provides to the ~~Compliance Enforcement Authority~~CEA the required Documents, data, and information in the format and by the Required Date specified in the request.
- The Compliance Audit team reviews the submitted Documents, data, and 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 34.1.6.
- ~~If the Compliance Audit Team identifies evidence of a potential noncompliance with a Reliability Standard Requirement by the Registered Entity, the Compliance Enforcement Authority CEA conducts a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.~~

~~3.3.0.0 — Compliance Enforcement Authority CEA Annual Audit Plan and Schedule~~

~~3.4 — The Compliance Enforcement Authority CEA 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.~~

~~3.5 — Prior to October 1 of the year preceding the year covered by the Annual Audit Plan, the Compliance Enforcement Authority CEA shall notify Registered Entities subject to Compliance Audits during the upcoming year of the Compliance Audit schedule. The Compliance Enforcement Authority CEA will give due consideration to any schedule changes requested by Registered Entities for reasonable cause.~~

~~3.6 Revisions and additions to a Regional Entity Annual Audit Plan shall be communicated to and approved by NERC, and shall be communicated to the Registered Entity in a timely manner (normally sixty (60) days in advance) of changes or revisions to scheduled Compliance Audit dates.~~

3.6.1.14.1.2 Frequency of Compliance Audits

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The ~~Compliance Enforcement Authority~~CEA will perform ~~comprehensive risk-based~~ 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~~CEA (i) may initiate an unscheduled Compliance Audit of any Registered Entity at any time if the ~~Compliance Enforcement Authority~~CEA reasonably determines it to be necessary to ensure the Registered Entity's compliance with Reliability Standards, ~~and (ii)~~ The CEA shall initiate an unscheduled Compliance Audit if directed by FERC.

The ~~Compliance Enforcement Authority~~CEA 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 prior to or on the same date it notifies the Registered Entity.

The ~~Compliance Enforcement Authority~~CEA 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.

3.6.1.24.1.3 Scope of Compliance Audits

3.1.4.14.1.3.1 Reliability Standards

~~A~~The CEA will tailor the scope of the Compliance Audit ~~shall to include those~~ Reliability Standards ~~applicable to the Registered Entity that are determined~~identified through the NERC-approved risk-based processes, including Inherent Risk Assessments, internal controls, and other inputs. ~~described herein, and~~The scope of the Compliance Audit may include ~~other~~ Reliability Standards applicable to the Registered Entity whether or not they are identified in the ~~Regional Entity's Regional~~ERO CMEP 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 CEA may use any process herein, in addition to, or in lieu of a Compliance Audit to monitor compliance with Reliability Standards.~~

3.1.44.1.3.2 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 CEA 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 CEA (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 CEA may modify t~~The beginning date of the audit period for any given Reliability Standard Requirement based on may account for factors such as an intervening compliance monitoring process. The End Date should will be ~~a specified date prior to the scheduled start of~~

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~~the Compliance Audit, such as the date of the notification notice 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~~CEA may request evidence showing compliance for ~~the entire period described above. If each applicable~~ Reliability Standard as follows:

- For Reliability Standard Requirements specifying activities to be performed on a periodic basis of three calendar years or less: the lesser of (i) three years or (ii) the retention period described in the Reliability Standard.
- For Reliability Standard Requirements specifying activities to be performed on a periodic basis of greater than three calendar years: evidence showing that the required performance was made at the last required interval, with evidence of previous intervals or schedules of performance.

~~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 AuthorityCEA 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.~~

~~34.1.34.3~~ — ~~Review of Mitigating Activities~~

~~The Compliance Audit may include a review of any Mitigating Activities which that 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.~~

~~3.6.1.34.1.4~~ Conduct of Compliance Audits

~~3.74.1.4.1~~ ~~3.1.5.1~~ Composition of Compliance Audit Teams

The Compliance Audit team shall be comprised of members whom the ~~Compliance Enforcement AuthorityCEA~~ 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 AuthorityCEA~~ and is responsible for the conduct of the Compliance Audit and preparation of the Compliance Audit report.

~~34.1.54.2~~ Requirements for Compliance Audit Team Members

Each Compliance Audit team member must:

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- Be free of conflicts of interests in accordance with the ~~Compliance Enforcement Authority~~CEA 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~~CEA is applicable.
- Successfully complete all required NERC or NERC-approved Regional Entity auditor training ~~applicable to the Compliance Audit~~.

Prior to the Compliance Audit, the ~~Compliance Enforcement Authority~~CEA shall provide confirmation to the Registered Entity that all Compliance Audit team members have executed confidentiality agreements or acknowledgments.

34.1.45.3 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 34.1.4.1 are observers.

In addition, at the request of the Registered Entity being audited, the ~~Regional Entity~~CEA 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

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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~~CEA 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.

34.1.54.4 Registered Entity Objections to Compliance Audit Team

A Registered Entity subject to a Compliance Audit may object to any member of the Compliance Audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Any such objections must be provided in writing to the ~~Compliance Enforcement Authority~~CEA no later than ~~fifteen thirty~~ (1530) days prior to the start of ~~the on-site~~ Compliance Audit ~~work~~. This ~~fifteen-thirty~~ (1530) day requirement shall not apply where a Compliance Audit team member has been appointed less than ~~twenty-thirty-five~~ (2035) days prior to the start of ~~on-site-the~~ Compliance Audit ~~work~~, in which case the Registered Entity must provide any objections to the ~~Compliance Enforcement Authority~~CEA 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 34.1.3, the Registered Entity must provide any objections to the ~~Compliance Enforcement Authority~~CEA 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~~CEA will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in Section 34.1 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.

3.7.1.14.1.5 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; and identify any Remedial Action Directives, Mitigation Plans, or other Mitigating Activities which have been ~~completed or pending in the year of~~ reviewed during the Compliance Audit; ~~and identify if any Confidential Information has been redacted~~. The draft Compliance Audit report may also state areas of concern and recommendations identified by the Compliance Audit team. The draft Compliance Audit report will be provided to the Registered Entity for comment. The Registered Entity has thirty (30) days to comment on the draft Compliance Audit report and to identify Confidential Information proposed for redaction.

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 Compliance Audit report on or before the date the final report is provided to NERC. The

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~~Compliance Enforcement Authority~~CEA provides the final Compliance Audit report to NERC, which in turn provides the report to FERC if the Compliance Audit 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 Compliance Audit 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~~CEA in accordance with Section 9.0, Data Retention and Confidentiality, and NERC or Regional EntityCEA requirements.

NERC will ~~not~~ publicly post ~~the final~~ Compliance Audit ~~report for at least five (5) business days following receipt~~results, redacting information the CEA deems Confidential Information. This posting of Compliance Audit results will include general Compliance Audit information, such as Registered Entity name, NERC Compliance Registry identification, date of the Compliance Audit, period covered, and any potential noncompliance.

If the Compliance Audit ~~report~~ identifies any ~~Possible Violations of potential noncompliance with~~ one or more Reliability Standards, the final Compliance Audit ~~report~~results, or pertinent part thereof identifying the ~~Possible Violations~~potential noncompliance, shall not be released to the public by NERC until final disposition, including (i) the ~~Possible Violation~~potential noncompliance is dismissed ~~prior to becoming a Confirmed Violation~~, or (ii) NERC submits a ~~Notice of Penalty~~disposition of the potential noncompliance to FERC or other Applicable Governmental Authority, ~~or (iii) the Registered Entity executes a settlement agreement with the Compliance Enforcement Authority~~CEA pursuant to Section 5.6.

~~Information deemed by a Compliance Enforcement Authority~~CEA ~~or the Registered Entity as Critical Energy Infrastructure Information or Confidential Information shall be redacted from any public reports.~~

3.7.24.2 Self-Certifications

The ~~Compliance Enforcement Authority~~CEA may require Registered Entities to self-certify their compliance with Reliability Standards.

43.2.1 Self-Certification Process ~~Steps~~

The process ~~steps for the~~ Self-Certifications ~~process are~~is as follows:

- ~~The Compliance Enforcement Authority~~CEA ~~posts and updates the reporting schedule containing the applicable reporting periods and informs Registered Entities. The Compliance Enforcement Authority~~CEA ~~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.~~
- At least sixty (60) days in advance, ~~The Compliance Enforcement Authority~~CEA 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~~

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~~advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).~~

- ~~• The Registered Entity provides to the CEA the required information to the Compliance Enforcement Authority CEA in the form and manner, and by the Required Date, as~~ specified by the ~~Compliance Enforcement Authority CEA.~~
- 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 CEA~~ 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 t~~The ~~Compliance Enforcement Authority CEA~~ may request additional Documents, data, and/or information, if necessary.
- ~~• If the Compliance Enforcement Authority CEA's review of the Self-Certification indicates a potential noncompliance with a Reliability Standard by the Registered Entity, the Compliance Enforcement Authority CEA conducts a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.~~
- ~~• Receipt of a Self-Certification by the Compliance Enforcement Authority CEA shall not be construed as a finding by the Compliance Enforcement Authority CEA that the Registered Entity is compliant with, not compliant with, subject to, or not subject to, the Reliability Standard Requirement.~~

3.7.34.3 Spot Checks

Spot Checks ~~will may~~ be conducted by the ~~Compliance Enforcement Authority CEA~~. Spot Checks may be initiated at the discretion of the ~~Compliance Enforcement Authority CEA~~ 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.~~

3.7.3.14.3.1 Spot Check Process Steps

The process ~~steps~~ for a Spot Checking ~~are is~~ as follows:

- The ~~Compliance Enforcement Authority CEA~~ 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 t~~The ~~Compliance Enforcement~~

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~~Authority~~CEA will allow at least twenty (20) days for the Registered Entity to submit the Documents, data, and information or make it available for review.

- The ~~Compliance Enforcement Authority~~CEA, as part of the notification package, shall provide the Registered Entity with the names and recent employment histories of the persons who will be conducting the Spot Check. The ~~Compliance Enforcement Authority~~CEA 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 ~~43.1.54.4~~. Any such objections must be submitted to the ~~Compliance Enforcement Authority~~CEA by the later of (i) five (5) business days before the Documents, data, and information being requested by the ~~Compliance Enforcement Authority~~CEA 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 ~~34.1~~ 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 Documents, data, ~~documentation,~~ and information and an on-site review.
- The Registered Entity provides the required Documents, data, and information to the ~~Compliance Enforcement Authority~~CEA in the format and by the Required Date specified in the request.
- The Spot Check Team conducts a review of the Documents, data, and information submitted to determine compliance with the Reliability Standards Requirements and may request additional Documents, 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 CEA 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 Spot Check report.
- The Spot Check team considers any corrections based on the Registered Entity's comments, finalizes the Spot Check report₂ and provides it to the Registered Entity and to NERC.
- ~~If~~The Compliance Enforcement Authority CEA is a Regional Entity, the Regional Entity provides the final Spot Check report to NERC. NERC provides the Spot Check report to FERC if the Spot Check report pertains to a Registered Entity₂ or to a portion of the Bulk Power System₂ over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the Spot Check 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 Spot Check report to FERC or to another

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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~~CEA or by NERC.

3.7.44.4 Compliance Investigations

A Compliance Investigation may be initiated at any time by the ~~Compliance Enforcement Authority~~CEA ~~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.¹ The Regional Entity shall not be entitled to appeal NERC's decision to lead a Compliance Investigation.

Compliance Investigations are confidential, unless FERC directs that a Compliance Investigation should be public or that certain information obtained in the Compliance Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Investigation will be made public in accordance with Section 1500 of the NERC Rules of Procedure and 18 C.F.R. §39.7(b)(4).

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 to the other Applicable Governmental Authority 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-use 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

¹Examples of situations in which NERC may decide to lead a Compliance Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate Compliance Investigations into matters that may cross Regional Entity boundaries, ~~(iii) where the potential noncompliance is related to the Regional Entity or one of its affiliates, divisions, committees or subordinate structures,~~ or ~~(iii)~~ (iii) where the Regional Entity determines it cannot conduct the Compliance Investigation.

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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~~use 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.

3.7.4.14.4.1 Compliance Investigation Process Steps

The process ~~steps~~ for a Compliance Investigation ~~are~~is as follows:

- The ~~Compliance Enforcement Authority~~CEA 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~~CEA: (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~~CEA after initiation of the Compliance Investigation.
- NERC assigns a NERC staff member to the Compliance Investigation as an observer or team member and to serve as a single point of contact for communications with NERC, and notifies the Registered Entity as to whether the NERC staff member is acting as an observer or as a team member. Within three (3) business days after NERC receives notice of the decision to initiate a Compliance Investigation, NERC will notify FERC and each other Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the Bulk Power System to which the Compliance Investigation relates. Any such notice to FERC or to another Applicable Governmental Authority will be provided in accordance with Section 8.0, Reporting and Disclosure.

The ~~Compliance Enforcement Authority~~CEA requests Documents, data, and information ~~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~~CEA within ~~such the~~ ten (10) business day period. The ~~Compliance Enforcement Authority~~CEA 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 Documents, data, and information to the ~~Compliance Enforcement Authority~~CEA in the format and by the Required Date as

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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 visits with interviews of the appropriate personnel and review of Documents, data, and information.
- The ~~Compliance Enforcement Authority~~CEA 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~~CEA'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~~CEA 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~~CEA reviews Documents, data, and information to determine compliance with the Reliability Standards. The ~~Compliance Enforcement Authority~~CEA may request additional data and/or information, if necessary.
- The ~~Compliance Enforcement Authority~~CEA completes the assessment of compliance with the Reliability Standards, 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 AuthorityCEA, at any time during the Compliance Investigation, identifies a potential noncompliance with a Reliability Standard Requirement by a Registered Entity, the Compliance Enforcement AuthorityCEA shall conduct a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.~~
- If the ~~Compliance Enforcement Authority~~CEA 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.

3.7.54.5 Self-Reports

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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 will include a risk assessment of the noncompliance, a description of the extent of the noncompliance, the cause of the noncompliance, and the actions that have been taken or will be taken to ~~resolve the violation~~ mitigate the noncompliance, including preventing recurrence.

3.7.5.14.5.1 Self-Report Process Steps

The process ~~steps~~ for Self-Reports ~~are~~ is as follows:

- ~~• The Compliance Enforcement Authority CEA 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 CEA.~~
- The ~~Compliance Enforcement Authority CEA~~ reviews the ~~information~~ Self-Report to evaluate compliance with the Reliability Standards and may request that the Registered Entity provide clarification or additional Documents, data, and ~~or~~ information.
- ~~• The Compliance Enforcement Authority CEA conducts a Preliminary Screen of the Self-Report information in accordance with Section 3.8.~~

43.5A Self-Logging

Registered Entities found by the ~~Compliance Enforcement Authority CEA~~ 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 CEA~~ 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~~ Mitigating a 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 CEA~~ 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 t~~ The logs will be available for review, upon request, by NERC and Applicable Governmental Authorities. The noncompliance logged in this manner for which there will be no further action shall be exempt from: (i) the Preliminary Screen under Section 4.8; and (ii) reporting requirements under Section 8.0. A potential noncompliance logged in this manner is reviewed by the CEA and does not require further action. The CEA also has discretion to resolve the noncompliance as a Compliance Exception or in accordance with Section 5.0.

3.7.64.6 Periodic Data Submittals

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The ~~Compliance Enforcement Authority~~CEA requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, ~~or as established by the Compliance Enforcement Authority~~CEA, ~~or on an as-needed basis~~. The ~~Compliance Enforcement Authority~~CEA 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~~CEA will normally issue this request with no less than twenty (20) days advance notice.

~~3.7.6.14.6.1~~ Periodic Data Submittals Process Steps

The process ~~steps~~ for Periodic Data Submittals ~~are is~~ as follows:

- The ~~Compliance Enforcement Authority~~CEA posts the current data reporting schedule on its website and informs Registered Entities of changes and/or updates. The ~~Compliance Enforcement Authority~~CEA ensures that ~~the any~~ required submittal forms for the Reliability Standards being evaluated are maintained and available.
- ~~The Compliance Enforcement Authority~~CEA ~~makes a request for a Periodic Data Submittal.~~
- The Registered Entity provides the required Documents, data, and information to the ~~Compliance Enforcement Authority~~CEA in the format and by the Required Date specified in the request.
- The ~~Compliance Enforcement Authority~~CEA reviews the Documents, data, and information submittal to determine compliance with the Reliability Standards and may request additional Documents, data, and/or information if necessary.
- ~~If the Compliance Enforcement Authority~~CEA's review of the data submittal indicates a potential noncompliance with a Reliability Standard Requirement by the Registered Entity, ~~the Compliance Enforcement Authority~~CEA performs a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.
- Receipt of a Periodic Data Submittal by the ~~Compliance Enforcement Authority~~CEA shall not be construed as a finding by the ~~Compliance Enforcement Authority~~CEA that the Registered Entity is compliant with, not compliant with, subject to, or not subject to, the Reliability Standard Requirement.

~~3.7.74.7~~ Complaints

~~Either NERC or Regional Entities~~A CEA may receive Complaints alleging violations of a Reliability Standard. The ~~Compliance Enforcement Authority~~CEA will notify NERC upon receipt of a Complaint and then 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 retains the discretion to review any Complaint where the ~~Compliance Enforcement Authority~~CEA determines it cannot conduct the review, or if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complainant or to direct a Regional Entity to review a Complaint.

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~~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~~CEA ~~conducting the~~ reviewing the Complaint 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~~CEA 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~~CEA determines that initiating another compliance monitoring or enforcement process is warranted, the ~~Compliance Enforcement Authority~~CEA shall conduct that compliance monitoring or enforcement process in accordance with the applicable provisions of Sections 34.0 or 5.0.

3.7.7.14.7.1 Complaint Process Steps

The ~~detailed~~ process ~~steps~~ for ~~the a~~ Complaint ~~process are~~is 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~~CEA 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 Sections 43.0 or Section 5.0; otherwise it takes no further action. The ~~Compliance Enforcement Authority~~CEA notifies the complainant, the Registered Entity, and NERC of the initiation of the compliance monitoring or enforcement process. If the ~~Compliance Enforcement Authority~~CEA determines that initiation of another compliance monitoring or enforcement process is not warranted, it will notify the complainant, and NERC, ~~and the Registered Entity~~ that no further action will be taken.
- The ~~Compliance Enforcement Authority~~CEA ~~fully~~ documents the Complaint and the Complaint review, and whether another compliance monitoring or enforcement process is warranted.

3.7.24.7.2 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

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the complainant's identity not be disclosed.² All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed ~~shall~~may be investigated by NERC or the Regional Entity following the procedural steps described in Section 43.7.1. ~~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 to any third party 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~~CEA determines that initiation of another compliance monitoring and enforcement process is not warranted, it will notify the complainant, and NERC, ~~and the Registered Entity~~ that no further action will be taken.

3.84.8 Preliminary Screen

If the ~~Compliance Enforcement Authority~~CEA obtains information, through one of the compliance monitoring processes described in this Section 43.0 or by any other means, that indicates a potential noncompliance with a Reliability Standard Requirement, the ~~Compliance Enforcement Authority~~CEA shall conduct a Preliminary Screen of the potential noncompliance. The Preliminary Screen shall be conducted within ~~five ten~~ (510) business days after the ~~Compliance Enforcement Authority~~ potential noncompliance is identified ~~the potential noncompliance through one of the CMEP processes, except that (i) if the Compliance Enforcement Authority CEA 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 CEA identifies the potential noncompliance during a Compliance Investigation, the Preliminary Screen shall be conducted immediately after the Registered Entity is first notified of the potential noncompliance identified by the Compliance Investigation. All self-logged noncompliance, in accordance with Section 4.5A, shall be exempt from the Preliminary Screen.~~

A Preliminary Screen shall be limited to determining whether:

- (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~~Registered 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~~one 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 CEA shall proceed in~~

²NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see www.nerc.com for additional information).

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~~accordance with Section 5.0, unless the Compliance Exception Process is used in accordance with Section 3A.1.~~

~~The Compliance Enforcement authority CEA 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 s~~Section 5.0 may not be the most appropriate, efficient, or desirable means ~~by which~~ to achieve the overall objectives of the ~~Compliance Program CMEP~~ for NERC, the ~~Compliance Enforcement Authority CEA~~, and the Registered Entity.

The Find, Fix, Track and Report, Self-Logging, and ~~the~~ Compliance Exception processes are alternatives to the process outlined in ~~section~~ 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 CEA~~ 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~~ overall compliance history to determine whether a Registered Entity should continue to qualify for Compliance Exception treatment.

Under the Compliance Exception Process, the CEA will review the noncompliance to determine if it poses a minimal risk to the reliability of the Bulk Power System. If the CEA determines the noncompliance poses a minimal risk and is appropriate for Compliance Exception treatment, the CEA will inform the Registered Entity and NERC of this determination. The noncompliance will be considered closed unless it is later determined that: 1) there was a material misrepresentation; or 2) the Registered Entity has not mitigated the noncompliance. If the CEA determines the noncompliance is not appropriate for Compliance Exception treatment, the CEA may pursue other monitoring and enforcement actions.

The Compliance Exception 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~~

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- (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~~ resolve of the noncompliance.

4A.2 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;
- (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;
- (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 resolve the noncompliance.

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

~~3.01.0 ANNUAL IMPLEMENTATION PLANS~~

~~3.11.01.1.1 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 CEA. 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.~~

~~3.13.01.1.1 Regional Implementation Plan~~

~~3.141.1 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~~

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~~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.~~

3.154.9

4.05.0 ENFORCEMENT ACTIONS

The ~~Compliance Enforcement Authority~~CEA shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the ~~Compliance Enforcement Authority~~CEA'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 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~~CEA 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 NERC 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~~ 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 CEA may execute the steps described in Attachment 1, Process for Non-submittal of Requested Data.~~

~~The CEA executes~~ The following ~~enforcement process is undertaken by the Compliance Enforcement Authority CEA following after identification the Preliminary Screen of a Possible Violation potential noncompliance of with a Reliability Standard Requirement by a Registered Entity.~~ However, under the circumstances presented by some potential noncompliance, 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 CMEP for NERC, the ~~Compliance Enforcement Authority~~CEA, and the Registered

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Entity. In such circumstances, the CEA may use 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 Assessment of Potential Noncompliance

As soon as practicable after the Preliminary Screen is complete and the CEA identifies a potential noncompliance, the CEA shall conduct an assessment of the facts and circumstances surrounding the potential noncompliance. The CEA shall determine whether evidence exists to indicate the Registered Entity has violated the Reliability Standard Requirement(s) identified, or whether the potential noncompliance should be dismissed. The CEA may consider any additional information to demonstrate that the potential noncompliance should be resolved through the Compliance Exception process or the Find, Fix, Track and Report process.

~~Notice of Possible Violation~~

~~4.25.2~~ Notice of Possible Violation Preliminary Screen

~~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, tAfter the Preliminary Screen, Tthe Compliance Enforcement Authority~~CEA shall issue a Notice of Possible Violationprovide the following information to the Registered Entity and to NERC.~~The Notice of Possible Violation shall:~~

- (i) state that a ~~Possible Violation~~potential noncompliance by the Registered Entity has been identified;
- (ii) provide a brief description of the ~~Possible Violation~~potential noncompliance, including the Reliability Standard requirement(s) and, if known, the date(s) involved; and
- (iii) instruct the Registered Entity to retain and preserve all data and records relating to the ~~Possible Violation~~potential noncompliance.

~~4.3 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~~CEA 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 otherNERC will notify the Applicable Governmental Authorities ~~shall be provided in accordance with~~pursuant to Section 8.0, Reporting and Disclosure.

~~4.4~~

~~5.2~~ Assessment of Possible Violation

~~4.6 After issuing a Notice of Possible Violation, the Compliance Enforcement Authority~~CEA 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

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~~should be dismissed. The Compliance Enforcement Authority (CEA) 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:~~

- ~~(4) —The Registered Entity mitigates the noncompliance; and~~
- ~~(5) —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~~
- ~~(6) —FFTs are tracked and analyzed as necessary by NERC as appropriate to identify emerging risks and other pertinent trends; and~~
- ~~(7) The Registered Entity is provided the opportunity to object to the use of the FFT process to resolution of resolve the noncompliance.~~

5.3 Notification to Registered Entity of Alleged Violation

If the ~~Compliance Enforcement Authority (CEA)~~ determines, based on an assessment of the facts and circumstances surrounding a ~~Possible Violation~~potential noncompliance, that evidence exists to indicate a Registered Entity has violated a Reliability Standard and resolution as a Compliance Exception or FFT is not appropriate, the ~~Compliance Enforcement Authority (CEA)~~ shall notify the Registered Entity of the determination of the Alleged Violation, through an offer of settlement or issuance of a Notice of Alleged Violation and Proposed Penalty or Sanction or similar notification (NAVAPS). ~~The CEA provides the NAVAPS and shall report the Alleged Violation to NERC.~~ The ~~notification of Alleged Violation~~NAVAPS shall be transmitted by the ~~Compliance Enforcement Authority (CEA)~~ to the Registered Entity by electronic ~~mail means~~ and shall be effective as of the date of the electronic ~~mail message~~notification from the ~~Compliance Enforcement Authority (CEA) transmitting the notification.~~ The ~~notification of Alleged Violation~~NAVAPS 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 (CEA)~~ believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed Penalty or sanction, if any, determined by the ~~Compliance Enforcement Authority (CEA)~~ to be applicable to the Alleged Violation in accordance

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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~~CEA 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~~Mitigating Activities while contesting the Alleged Violation and/or the proposed Penalty or sanction, and that submission of ~~a Mitigation Plan~~Mitigating Activities 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.

Upon receipt of a NAVAPS, NERC shall notify FERC of the Alleged Violation and, if the Alleged Violation pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, shall notify such other Applicable Governmental Authority of the Alleged Violation, ~~within two (2) business days of receipt from the Compliance Enforcement Authority~~CEA. 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~~NAVAPS within thirty (30) days following the date of the ~~notification of Alleged Violation~~NAVAPS by electronic ~~mail~~means, it shall be deemed to have accepted the ~~Compliance Enforcement Authority~~CEA's determination of violation and Penalty or sanction, and the ~~Compliance Enforcement Authority~~CEA shall issue a Notice of Confirmed Violation or similar notification to the Registered Entity and shall report the Confirmed Violation to NERC. At the

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time of notifying the Registered Entity of the Confirmed Violation, the ~~Compliance Enforcement Authority~~CEA 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~~CEA, 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~~CEA shall schedule a conference with the Registered Entity within ten (10) business days after receipt of the response. If the ~~Compliance Enforcement Authority~~CEA 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~~CEA 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 ~~be~~ become a Confirmed Violation.

If a hearing is requested the ~~Compliance Enforcement Authority~~CEA shall initiate the hearing process in accordance with **Attachment 2, Hearing Procedures** or the hearing process in effect for the CEA.

5.5 Hearing Process for Compliance Hearings

The ~~Compliance Enforcement Authority~~CEA hearing process is set forth in **Attachment 2** or the hearing procedure in effect for the CEA.

5.6 Settlement Process

The Registered Entity can request settlement negotiations, and the CEA can offer settlement, at any time, including prior to the issuance of notification of an Alleged Violation; however, the ~~Compliance Enforcement Authority~~CEA may decline to engage in or to continue settlement negotiations after a ~~Possible Violation~~potential noncompliance or Alleged Violation becomes a Confirmed Violation in accordance with Section 5.4. The Registered Entity or the ~~Compliance Enforcement Authority~~CEA may terminate settlement negotiations at any time. Where the ~~Compliance Enforcement Authority~~CEA has agreed to ~~engage in~~ settlement negotiations, the running of the time period specified in Section 5.4 for the Registered Entity to respond to the notification of Alleged Violation is suspended until settlement negotiations are concluded or terminate. NERC shall be notified of all settlement negotiations and may participate in any settlement negotiations. All settlement ~~negotiations~~ will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the ~~Compliance Enforcement Authority~~CEA shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf.

The ~~Compliance Enforcement Authority~~CEA 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

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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~~CEA 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~~CEA 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~~CEA 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~~CEA of any changes to the settlement that would result in approval, and within five (5) business days the ~~Compliance Enforcement Authority~~CEA will in turn notify the Registered Entity. If NERC rejects the settlement, the ~~Compliance Enforcement Authority~~CEA 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 information about 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 or a description of the Mitigating Activities, with any Critical Energy Infrastructure Information, Critical Electric Infrastructure Information, and Confidential Information redacted. ~~The Compliance Enforcement Authority CEA will issue a letter setting forth the final settlement terms including all Penalties, sanctions and mitigation requirements provided for in the final settlement.~~ Postings of Notices of Confirmed Violations are addressed in Section 8.0.

5.7 NERC Appeal Process

A Registered Entity or the ~~Compliance Enforcement Authority~~CEA may appeal the decision of a 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~~CEA with reasons for its remand, which may include a direction to the ~~Compliance Enforcement Authority~~CEA to revise the decision. If NERC affirms the decision, the ~~Compliance Enforcement Authority~~CEA shall issue a Notice of Confirmed Violation to the Registered Entity. If NERC directs the ~~Compliance Enforcement Authority~~CEA to revise the decision, a Registered Entity that was the subject of the decision or the ~~Compliance Enforcement Authority~~CEA may

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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~~CEA relied in proposing a Penalty or sanction.

After NERC receives a notification of Confirmed Violation from the ~~Compliance Enforcement Authority~~CEA, 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~~CEA 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~~CEA to revise a Penalty determination, in which case the Registered Entity subject to the Penalty, or the ~~Compliance Enforcement Authority~~CEA, 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~~NAVAPS or other notification of enforcement action from the ~~Compliance Enforcement Authority~~CEA, 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~~potential noncompliance or Alleged Violation, NERC shall submit a Notice of Penalty to the Applicable Governmental Authority and provide a copy to the ~~Compliance Enforcement Authority~~CEA. The ~~Compliance Enforcement Authority~~CEA 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~~potential noncompliance or Alleged Violation pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. Any such filing with FERC or with another Applicable Governmental Authority shall be made in accordance with Section 8.0, Reporting and Disclosure. NERC will include with the Notice of Penalty any statement provided by the Registered Entity as set forth in Sections 5.4 or 5.6.

The Penalty or sanction will be effective upon expiration of the thirty- (30) day period following filing with FERC of the Notice of Penalty (or such longer period as ordered by FERC) or, if FERC decides to review the Penalty or sanction, upon final determination by FERC.

~~4.10~~5.10 Completion of Enforcement Action

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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~~CEA 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~~CEA 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~~CEA shall issue the Registered Entity a Notice of Completion of Enforcement Action.

If the ~~Compliance Enforcement Authority~~CEA dismisses or disposes of a ~~Possible Violation~~potential noncompliance or Alleged Violation that does not become a Confirmed Violation, the ~~Compliance Enforcement Authority~~CEA 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~~CEA.

The Notice of Completion of Enforcement Action shall ~~include a release of~~address 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~~CEA, 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~~potential noncompliance requests a determination by the ~~Compliance Enforcement Authority~~CEA that another entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the ~~violation (if confirmed)~~noncompliance identified in the Notice of ~~Possible Violation~~potential noncompliance.

The procedures in this section apply only where an ISO/RTO requests a determination that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the ~~violation (if confirmed)~~noncompliance identified in a Notice of ~~Possible Violation~~potential noncompliance 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)

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In order to request the ~~Compliance Enforcement Authority~~CEA to make a determination in an enforcement action that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to a violation (if confirmed) of a Reliability Standard for which the ISO/RTO has received a Notice of ~~Possible Violation~~potential noncompliance, 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~~CEA may permit for good cause shown (i) submit a written request to the ~~Compliance Enforcement Authority~~CEA 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~~CEA shall contain:

- (1) the ~~Compliance Enforcement Authority~~CEA's identification number for the Notice of ~~Possible Violation~~potential noncompliance;
- (2) a statement that the ISO/RTO is requesting that the ~~Compliance Enforcement Authority~~CEA 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~~potential noncompliance;
- (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~~potential noncompliance. As the enforcement action proceeds, the ISO/RTO may supplement, expand or modify this explanation as additional information becomes available during the course of the enforcement action.

The ISO/RTO's notice to the specified other entity(ies) shall contain the following information:

- (1) The name of the specified other entity, and the name, telephone number and e-mail address of the specified other entity's contact person (person to whom the notice is being sent);
- (2) A statement that the ISO/RTO has received a Notice of ~~Possible Violation~~potential noncompliance from the ~~Compliance Enforcement Authority~~CEA, the ~~Compliance~~

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~~Enforcement Authority~~CEA's identification number for the Notice of ~~Possible Violation~~potential noncompliance, and contact information for the ~~Compliance Enforcement Authority~~CEA;

- (3) A statement that the ISO/RTO has requested the ~~Compliance Enforcement Authority~~CEA 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~~potential noncompliance, 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~~CEA determines the specified other entity was responsible, in whole or in part, for actions or omissions that caused or contributed to the ~~violation noncompliance~~ identified in the Notice of ~~Possible Violation~~potential noncompliance.
- (4) A statement that the specified other entity should promptly contact the ~~Compliance Enforcement Authority~~CEA for further information and to request to participate in the enforcement action relating to the Notice of ~~Possible Violation~~potential noncompliance.

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~~CEA 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~~CEA 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~~CEA 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~~CMEP and of Section 1500 of the NERC Rules of Procedure) that must be executed to obtain a copy of the Notice of ~~Possible Violation~~potential noncompliance and a copy of the ISO/RTO's written request to the ~~Compliance Enforcement Authority~~CEA 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~~potential noncompliance. In addition, the ~~Compliance Enforcement Authority~~CEA 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~~CEA stating why the specified other entity is not participating and providing any facts or information the other entity wishes to provide concerning the occurrence(s) that are the subject of the Notice of ~~Possible Violation~~potential noncompliance, and (ii) whether or not the specified other entity elects to participate in the enforcement action, the ~~Compliance Enforcement Authority~~CEA may determine that the specified other entity was responsible, in whole or in part, for actions or omissions that caused or contributed

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to the ~~violation-noncompliance~~ identified in the Notice of ~~Possible-Violationpotential noncompliance~~.

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-Violationpotential noncompliance~~ if the other entity(ies) submits a written request to participate to the ~~Compliance-Enforcement-AuthorityCEA~~ and executes a non-disclosure agreement in the form provided by the ~~Compliance-Enforcement-AuthorityCEA~~. 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-AuthorityCEA~~ and the ISO/RTO, or (ii) the date that the ~~Compliance-Enforcement-AuthorityCEA~~ issues a Notice of Confirmed Violation to the ISO/RTO. The ~~Compliance-Enforcement-AuthorityCEA~~ 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-AuthorityCEA~~ 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-AuthorityCEA~~ 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-AuthorityCEA~~'s notice that the specified other entity is allowed to participate in the enforcement action shall include a copy of the Notice of ~~Possible-Violationpotential noncompliance~~ 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-AuthorityCEA~~ 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-ProgramCMEP~~.

If the ISO/RTO fails to meet the requirements of Section 5.11.1, the ~~Compliance-Enforcement-AuthorityCEA~~ shall issue a notice to the ISO/RTO and to the specified other entity(ies) stating that the ~~Compliance-Enforcement-AuthorityCEA~~ 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-Violationpotential noncompliance~~.

5.11.3 ~~Compliance-Enforcement-AuthorityCEA~~'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-noncompliance~~ identified in the Notice of ~~Possible-Violationpotential noncompliance~~ issued to the ISO/RTO, the ~~Compliance-Enforcement-AuthorityCEA~~ shall provide to NERC (i) a copy of the ISO/RTO's written request for a determination that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the ~~violation-noncompliance~~ identified in the Notice of

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~~Possible Violation~~potential noncompliance, and (ii) the ISO/RTO's notice to the specified other entity(ies).

(b) On the same day that the ~~Compliance Enforcement Authority~~CEA 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~~CEA 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~~CEA'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-noncompliance~~ that is the subject of the Notice of ~~Possible Violation~~potential noncompliance 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-noncompliance~~ identified in the Notice of ~~Possible Violation~~potential noncompliance, the ~~Compliance Enforcement Authority~~CEA 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~~CEA's determination shall only address whether or not the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation, and shall not address whether all or a part of any monetary Penalty imposed on the ISO/RTO for the violation should be allocated or assigned to the specified other entity(ies).

The specified other entity(ies) shall be entitled to request a hearing on the ~~Compliance Enforcement Authority~~CEA's determination pursuant to Section 1.3.1 of Attachment 2 of this Appendix 4C, and to appeal the Hearing Body's decision pursuant to Section 1.7.10 of Attachment 2 to this Appendix 4C, as though the specified other entity(ies) were a Registered Entity(ies).

5.11.5 Procedure Where ISO/RTO Members Are Allowed to Directly Assign Monetary Penalties for Violations of Reliability Standards to the ISO/RTO

If an ISO/RTO's tariffs, agreement, or other relevant governance documents establish procedures that allow members of the ISO/RTO to directly assign to the ISO/RTO monetary Penalties imposed on the ISO/RTO member(s) for violations of Reliability Standards, then the ISO/RTO members may follow the same requirements of Sections 5.11.1 and 5.11.2 as are applicable to an ISO/RTO under those sections, and the ISO/RTO shall be afforded the same rights to participate in the enforcement action as a specified other entity under Sections 5.11.1, 5.11.2, and 5.11.4, subject to the same requirements and conditions specified in those sections. In such circumstances, the ISO/RTO shall be deemed to be a "specified other entity" for purposes of this Section.

5.11.6 Obligation to Pay Monetary Penalty

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(a) The ISO/RTO shall be obligated and responsible to pay any monetary Penalty imposed by the ~~Compliance Enforcement Authority~~CEA on the ISO/RTO for violation of a Reliability Standard, in accordance with Section 5.10, (i) regardless of whether the ~~Compliance Enforcement Authority~~CEA has made a determination that a specified other entity was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation, (ii) without regard to the timing of any separate proceeding(s) in which the ISO/RTO seeks to allocate some or all of the monetary Penalty to a specified other entity(ies), and (iii) without regard to whether or when the ISO/RTO receives payment from the specified other entity(ies).

(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~~CEA 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.

5.06.0 MITIGATION OF ~~VIOLATIONS OF~~NONCOMPLIANCE WITH RELIABILITY STANDARDS

~~The Compliance Enforcement AuthorityCEA 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 AuthorityCEA may execute the steps described in Attachment 1, Process for Non-submittal of Requested Data.~~

5.16.1 Requirement for Submission of Mitigation Plans

A Registered Entity found to be in ~~violation of noncompliance with~~ a Reliability Standard shall file with the ~~Compliance Enforcement Authority~~CEA (i) ~~a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation noncompliance will be or has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation.~~ The CEA may request that the Registered Entity submit a proposed Mitigation Plan. A Registered Entity's ~~may also submittal of a proposed Mitigation Plan at any other time, including with a Self Report, or, without~~ does not constitute an admitting it has committed ~~ssion of~~ a violation, ~~in response to a Notice of Possible Violation or notification of Alleged Violation.~~

5.26.2 Contents of Mitigation Plans

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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 potential noncompliance(s) with Reliability Standard(s)~~ the Mitigation Plan will correct.
- The cause of the ~~Possible, Alleged or Confirmed Violation~~ potential noncompliance(s).
- The Registered Entity's ~~action plan~~ proposed Mitigating Activities to correct the ~~Possible, Alleged or Confirmed Violation~~ potential noncompliance(s).
- The Registered Entity's ~~action plan~~ proposed Mitigating Activities to correct the cause of the ~~Possible, Alleged or Confirmed Violation~~ potential noncompliance(s).
- The Registered Entity's ~~action plan~~ proposed Mitigating Activities to prevent recurrence of the ~~Possible, Alleged or Confirmed Violation~~ potential noncompliance(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~~ potential noncompliance(s) corrected.
- ~~Implementation milestones~~ A timeline for completion of implementation milestones. The CEA may agree to a mutually acceptable timeline for completion of milestones, typically no more than three (3) months for each milestone apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. The CEA maintains discretion to adjust the timeline based on factors such as the complexity of the Mitigating Activities or the risk posed to the Bulk Power System. 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.

~~5.3~~ Timetable for Completion of Mitigation Plans

~~The Mitigation Plan shall be completed in accordance with its terms. At the Compliance Enforcement Authority's discretion, the completion deadline may be extended for good cause including, but not limited to: (i) operational issues such as the inability to schedule an outage to complete Mitigating Activities, and (ii) construction requirements in the Mitigation Plan that~~

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~~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 (CEA) 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 (CEA) 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 (CEA) at least five (5) business days before the original milestone or completion date. The Compliance Enforcement Authority (CEA) may accept a request for an extension or modification of a Mitigation Plan if the Compliance Enforcement Authority (CEA) 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 (CEA) 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.~~

5.86.3 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 affirming the violation(s), 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 (CEA) or the Hearing Body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the Compliance Enforcement Authority (CEA) before the Hearing Body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

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5.96.4 Review and Acceptance or Rejection of Proposed Mitigation Plans

Unless the time period is extended by the ~~Compliance Enforcement Authority~~CEA, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within ~~thirty-sixty~~ (360) 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~~CEA shall, within the initial or extended review period, notify the Registered Entity (and NERC if NERC is not the ~~Compliance Enforcement Authority~~CEA) that the review period is being extended and identify the date by which the ~~Compliance Enforcement Authority~~CEA will complete its review of the Mitigation Plan. The ~~Compliance Enforcement Authority~~CEA's extension notice shall also state that if the ~~Compliance Enforcement Authority~~CEA has not issued a notice by the end of the extended review period either stating that the ~~Compliance Enforcement Authority~~CEA accepts or rejects the proposed Mitigation Plan or further extending the ~~Compliance Enforcement Authority~~CEA's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted.

If the ~~Compliance Enforcement Authority~~CEA rejects a Mitigation Plan, the ~~Compliance Enforcement Authority~~CEA 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~~CEA will notify the Registered Entity within ~~ten-thirty~~ (+30) ~~business~~ days after receipt of a revised Mitigation Plan whether the ~~Compliance Enforcement Authority~~CEA 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. The CEA may notify the Registered Entity of extension of the review period. If the CEA does not provide notification to the Registered Entity within 30 days after receipt of a revised Mitigation Plan, the revised Mitigation Plan will be deemed accepted. 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~~CEA 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~~CEA 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-sixty~~ (360) 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.

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~~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.~~

6.5 Implementation of Mitigation Plans

The Mitigation Plan shall be implemented in accordance with its terms. At the CEA's discretion, the implementation deadline may be extended for good cause including, but not limited to: (i) operational issues such as the inability to schedule an outage to complete Mitigating Activities, and (ii) construction requirements in the Mitigation Plan that require longer to complete than originally anticipated. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the implementation of the accepted Mitigation Plan will be recorded by the CEA with associated sanctions or Penalties. The CEA 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 CEA will notify the Registered Entity that any findings of violations of the applicable Reliability Standards during the period that the accepted Mitigation Plan was being implemented have been waived and no Penalties or sanctions will apply. The CEA will also notify NERC of any such waivers of violations of Reliability Standards.

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A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the CEA at least five (5) business days before the original milestone or completion date. The CEA may accept a request for an extension after the original milestone or completion date for good cause. The CEA may accept a request for an extension or modification of a Mitigation Plan, including milestone completion dates, if the CEA 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 CEA or the Hearing Body in accordance with Section 6.4, 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.

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.

5.126.6 Completion/Confirmation of Implementation of Mitigation Plans

The Registered Entity shall provide updates ~~at least quarterly to~~ as requested by the ~~Compliance Enforcement Authority~~ CEA on the progress of the Mitigation Plan. The ~~Compliance Enforcement Authority~~ CEA will track the Mitigation Plan to completion and may conduct on-site visits and review status during a Compliance Audit or other compliance monitoring activity to monitor ~~Mitigation Plan~~ Mitigating Activities implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to the ~~Compliance Enforcement Authority~~ CEA 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 retain Documents, data, or~~ and information sufficient for the ~~Compliance Enforcement Authority~~ CEA to verify completion. As necessary, ~~The Compliance Enforcement Authority~~ CEA shall may request such Documents, data, or and 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~~ CEA. In addition, the ~~Compliance Enforcement Authority~~ CEA 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.

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5.136.7 Recordkeeping

The ~~Compliance Enforcement Authority~~CEA will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the ~~violation~~noncompliance.
- Monitoring method by which the ~~violation~~noncompliance was detected, i.e., Self-Certification, Self-Report, Compliance Audit, Compliance Investigation, Complaint, etc.
- Date(s) of Notice of ~~Possible Violation~~potential noncompliance 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 Documents, data, and information submitted as evidence of completion.

6.07.0 REMEDIAL ACTION DIRECTIVES

The ~~Compliance Enforcement Authority~~CEA 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~~potential noncompliance with a Reliability Standard. The ~~Compliance Enforcement Authority~~CEA will specify whether a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, the ~~Compliance Enforcement Authority~~CEA 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~~potential noncompliance with Reliability Standards that ~~are~~is the basis for issuance of the Remedial Action Directive; (ii)

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a discussion of the factual basis for the Remedial Action Directive; (iii) the requirements the ~~Compliance Enforcement Authority~~CEA 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~~CEA; 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~~CEA 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~~CEA will monitor implementation of Remedial Action Directives as necessary to verify compliance.

The ~~Compliance Enforcement Authority~~CEA 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~~CEA 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~~CEA 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.

7.08.0 REPORTING AND DISCLOSURE

8.1 Information to be Reported

Regional Entities shall promptly submit to NERC, or otherwise make available through a common database, electronic reports containing current information concerning the information listed below. NERC will work with Regional Entities to specify form, content, timing, and method of submitting reports and notices.

- (1) The status of the review and assessment of ~~all Possible Violations, Alleged Violations and Confirmed Violations of potential noncompliance with~~ Reliability Standards by Registered Entities,

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- (2) The potential impact of any ~~Alleged Violation or Confirmed Violation~~potential noncompliance 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-notification~~ from a ~~Regional Entity~~CEA of a ~~Possible Violation, potential noncompliance or the issuance of a NAVAPS Alleged Violation, or Confirmed Violation,~~ NERC shall notify FERC ~~of the Possible Violation, Alleged Violation or Confirmed Violation.~~

As provided for herein, during the course of compliance monitoring and enforcement activities relating to United States 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.

Where the ~~report-notification or NAVAPS~~ pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, NERC shall also notify such other Applicable Governmental Authority, ~~within two (2) business days of receiving a report of a Possible Violation, Alleged Violation or Confirmed Violation from the Regional Entity;~~ provided, that NERC will not disclose any non-public U-nited S.tates 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-nited S.tates 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~~CMEP, 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.

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NERC will publicly post on its website, in accordance with FERC requirements, rules, and regulations, each Notice of Penalty for violation of non-CIP Reliability Standards, with any Critical Energy Infrastructure Information, Critical Electric Infrastructure Information, or other Confidential Information redacted (unless posting of the Critical Energy Infrastructure Information, Critical Electric 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 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~~ noncompliance for which ~~m~~ Mitigation ~~a~~ Activities have not been completed. All such reports to FERC and to other Applicable Governmental Authorities shall be provided in accordance with this Section.

8.09.0 DATA RETENTION AND CONFIDENTIALITY

8.19.1 Records Management

The ~~Compliance Enforcement Authority~~ CEA 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~~ CMEP, 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~~ CMEP.

8.29.2 Retention Requirements

The ~~Compliance Enforcement Authority~~ CEA records management policy will ~~require that~~ address Documents, data, and 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. Where technically feasible, such Documents, data, and information 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. To meet these retention requirements for Documents, data, and information that remain in the possession of the Registered Entity at the end of the CMEP activity, the Registered Entity must comply with any retention direction provided by the CEA during any CMEP activity. The obligation to retain Documents, data, and information ~~and data~~ commences upon the initiation of the ~~Compliance Program~~ CMEP activity that produces the ~~data or~~ Documents, data, and information. If the Documents, data, and information ~~or data is~~ are material to the resolution of a noncompliance or controversy, the retention period for such Documents, data and information shall not commence until after the noncompliance or controversy is resolved.

Upon request from NERC, Regional Entities will provide to NERC copies of such Documents, data, and information ~~and data~~. NERC will retain the Documents, data, and information ~~and data~~ in order to maintain a record of activity under the ~~Compliance Program~~ CMEP. In providing the

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Documents, data, and information ~~and data~~ to NERC, the Regional Entity shall preserve any mark of confidentiality.

8.39.3 Confidentiality and Critical Energy Infrastructure Information

8.3.19.3.1 Definitions

Documents, data, and ~~information or data~~ generated or received pursuant to ~~Compliance Program~~ CMEP 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,” “Critical Electric Infrastructure Information,” and “Critical Infrastructure” shall have the meanings stated in Appendix 2 to the NERC Rules of Procedure.

8.3.29.3.2 Protection of Confidential Information

The ~~Compliance Enforcement Authority~~ CEA personnel (including any contractors, consultants and industry subject matter experts) and committee members, and participants in ~~Compliance Program~~ CMEP activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning Confidential Information.

8.3.39.3.3 Critical Electric Infrastructure Information and Critical Energy Infrastructure Information

The ~~Compliance Enforcement Authority~~ CEA will keep confidential all Critical Electric Infrastructure Information and Critical Energy Infrastructure Information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be Critical Electric Infrastructure Information or Critical Energy Infrastructure Information shall be redacted as needed, in accordance with Section 1500 of the NERC Rules of Procedure, and shall not be released publicly.

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ATTACHMENT 1

PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

FERC's regulations at 18 C.F.R. §39.2(d) provide that each user, owner, or operator of the Bulk Power System within the United States (other than Alaska and Hawaii) shall provide FERC, the ERO, and the applicable Regional Entity such information as is necessary to implement section 215 of the Federal Power Act as determined by FERC and set out in the rules of the ERO and each Regional Entity. In order to enforce this requirement, if Documents, data, information, or other reports (including Mitigation Plans) requested from a Registered Entity in connection with a ~~compliance monitoring process or enforcement process~~ CMEP activity are not received by the Required Date, the ~~Compliance Enforcement Authority~~ CEA may sequentially execute the following steps for each Reliability Standard Requirement for which the ~~Compliance Enforcement Authority~~ CEA has requested Documents, 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~~ CEA may afford the Registered Entity reasonable additional time to submit the Documents, data, information, or report due to the scope or difficulty of the request or requirement for Documents, data, information, or reports, the amount of the Documents, data, information, or reports requested or required, or the form in which the Documents, data, information, or other reports has been requested or is required to be provided.

Step 1: The ~~Compliance Enforcement Authority~~ CEA will issue a notification to the Registered Entity's designated contact for reliability matters, identifying the Documents, 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 Documents, data, information, or report, or contact the ~~Compliance Enforcement Authority~~ CEA with a proposed date by which the Registered Entity will provide the Documents, data, information, or report. If the ~~Compliance Enforcement Authority~~ CEA agrees with the Registered Entity on a revised date by which the Registered Entity will provide the Documents, 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~~ CEA 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 Documents, data, information, or report is not received within ten (10) business days, the ~~Compliance Enforcement Authority~~ CEA may (i) implement a compliance monitoring process directed to the Registered Entity, or (ii) issue a Notice or other notification of Alleged Violation and

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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 Documents, data, information, or report relates.

Step 3: If the Registered Entity fails to produce the requested or required Documents, 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~~CEA 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 Documents, 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 Documents, data, information, or reports in connection with a ~~compliance monitoring and enforcement process~~CMEP activity ~~and does not respond to subsequent requests (Steps 1 and 2 above) by the stated deadline or does not work in good faith with the CEA in connection with a CMEP activity~~. This process is not intended to apply where the Registered Entity responds, prior to the Required Date, to the initial request or requirement for Documents, data, information, or reports with requests for: i) clarification, definition of scope, or similar questions concerning the request or requirement for Documents, data, information, or reports, or ~~requests~~, prior to the Required Date, or ii) additional time to respond based on a) the scope or difficulty of the request or requirement for Documents, data, information, or reports, b) the amount or extent of the Documents, data, information, or reports requested or required, or c) the form in which the Documents, data, information, or report is to be provided, and works with the ~~Compliance Enforcement Authority~~CEA in good faith to respond to the request or requirement for Documents, data, information, or reports, as modified if appropriate by the ~~Compliance Enforcement Authority~~CEA based on questions raised by the Registered Entity.

ATTACHMENT 2 - HEARING PROCEDURES

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ATTACHMENT 2 - HEARING PROCEDURES

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

- (a) The provisions set forth in this **Attachment 2** (“Hearing Procedures”) shall apply to and govern practice and procedure before the ~~Compliance Enforcement Authority~~CEA in hearings in the United States conducted into:
- (1) whether Registered Entities within the ~~Compliance Enforcement Authority~~CEA’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. Where the Hearing Body established under Rules of Procedure Section 403.15A 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 sectors may control, and no single industry sector may veto, any decision by the Hearing Body on any matter brought before it for decision. Where the Hearing Body established under Rules of Procedure Section 403.15A is comprised solely of independent members and an independent hearing Officer, decisions shall require a majority vote. For the Hearing Body established under Rules of Procedure Section 403.15B, 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~~CEA have entered into a settlement agreement resolving the matters that are the subject of the hearing, the hearing shall be terminated by the Hearing Body and no further proceedings shall be conducted 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~~CEA'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~~CEA 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~~CEA'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) 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 [Intentionally Left Blank]

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 made to a Hearing Body established under Rules of Procedure Section 403.15A (Regional Entity Hearing Process) or 403.15B (Consolidated Hearing Process) shall be made with the Clerk.

The Clerk's office will be open during the regular business hours of the ~~Compliance Enforcement Authority~~CEA or NERC, each day except Saturday, Sunday, legal holidays and any other day declared by the ~~Compliance Enforcement Authority~~CEA or 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 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.

(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 Enforcement and the Registered Entity's compliance contact as registered with the ~~Compliance Enforcement Authority~~CEA, 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 NERC at the time that the ~~Compliance Enforcement Authority~~CEA transmits 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~~CEA or NERC 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~~CEA 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~~CEA or NERC 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

Except as provided below, all hearings and oral arguments shall be held at the principal office of the ~~Compliance Enforcement Authority~~CEA unless the Hearing Officer or Hearing Body designates a different location.

If the ~~Compliance Enforcement Authority~~CEA has adopted the Consolidated Hearing Process under Rules of Procedure Section 403.15B, all hearings and oral arguments shall be held at the principal office of the ~~Compliance Enforcement Authority~~CEA unless NERC, the ~~Compliance Enforcement Authority~~CEA, and the Registered Entity agree to 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~~CEA, 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~~CEA 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~~CMEP, 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.

(h) If the ~~Compliance Enforcement Authority~~CEA has adopted the Consolidated Hearing Process, the Compliance Staff must forward a hearing request to NERC within three (3) business days of receiving the request.

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 issue a final order within one hundred twenty (120) days of the notice of hearing. The Hearing Body may extend this deadline for good cause and shall provide written notice of any extension to all Participants.

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) A Hearing Officer shall 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 Hearing Officer 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 sectors may control, and no single industry sector 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 applicable conflict of interest policy of the ~~Compliance Enforcement Authority~~ CEA, and/or that of NERC under the Consolidated Hearing Process.

(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~~CEA, or NERC under the Consolidated Hearing Process, 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~~potential noncompliance, 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~~ CEA for purposes of establishing the hearing forum, or between NERC, the Regional Entity, and the Registered Entity for purposes of establishing the hearing forum under the Consolidated Hearing Process.
- (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~~CEA 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~~CEA 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~~CEA or NERC, or constitutes attorney work product of counsel for the ~~Compliance Enforcement Authority~~CEA or NERC (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~~CEA, 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~~CEA, 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~~CEA 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~~CEA'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~~CEA's offices, other than copies of Documents made available by the ~~Compliance Enforcement Authority~~CEA 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~~CEA.

(g) Failure to Make Documents Available — Harmless Error

In the event that a Document required to be made available to a Participant pursuant to this Section is not made available by Staff, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to make the Document available was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff to produce a Document, the burden shall be on Staff to show that such failure was harmless error. The Hearing Officer, or, upon review, the Hearing Body shall determine whether the failure to make the Document available was harmless error.

1.5.8 Other Discovery Procedures

(a) In addition to the production of Documents by Staff for inspection and copying by Respondent and other Participants pursuant to Section 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 409 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.409, including data requests, written interrogatories and requests for production of Documents or things, depositions by oral examination, requests for inspection of Documents and other property, requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce Documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing.

(b) Unless otherwise directed by the Hearing Officer or Hearing Body upon motion by a Participant, or by the Hearing Officer, or by the Hearing Body on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.410 and 385.510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- (1) The provisions of subsections (d), (e) and (f) of Section 1.5.7 shall apply to any such discovery.
- (2) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(d)(2)) shall not be applicable.

- (3) The Hearing Officer and the Hearing Body have the authority to issue orders to compel the appearance by or production of Documents or information by, only a Person that (i) is a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the Hearing Body do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide Documents, information or testimony.
- (4) References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide Documents, information or testimony.
- (5) References to the “Commission” in Rules 402 through 410 and 510(e) shall be to FERC except as follows:
 - (i) the references in Rules 402(a), 404(b)(1) and 405(b), the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the Hearing Body,
 - (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and
 - (iii) the reference in Rule 510(e)(3) shall be deemed to be to the Hearing Officer or Hearing Body.
- (6) Unless otherwise ordered by the Hearing Officer or Hearing Body, a data request, set of interrogatories, request for production of Documents or things, request for inspection of Documents or other property, request for admissions, or order to produce or provide Documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or date of the order.
- (7) A list of withheld Documents, if any, shall be provided by any Participant required to produce Documents, at the time the Documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the Documents. Upon review, for good cause shown, the Hearing Officer may order the Participant to make any Document withheld available to any other Participant or Participants for inspection and copying.
- (8) In the event a Document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the Document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a Document or information, the burden shall be on the Participant that failed to produce or provide the Document or information to show that such failure was

harmless error. The Hearing Officer or, upon review, the Hearing Body shall determine whether the failure to make the Document available was harmless error.

- (9) Unless otherwise ordered by the Hearing Officer or Hearing Body, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date the request for hearing was filed.
 - (10) Notwithstanding subsections (b)(6) and (b)(9), however, if the shortened hearing procedure in Section 1.3.4 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.
- (c) The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives:
- (1) full disclosure of all relevant Documents and information;
 - (2) the exercise of due diligence in the conduct of discovery by a Participant; and
 - (3) disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

- (a) Unless the Hearing Officer orders otherwise and with the exception of (i) any adverse Participant examination pursuant to Section 1.6.16 and (ii) the testimony and Documents of a non-Participant provided pursuant to an order to produce or provide Documents, information or testimony, all witness direct testimony to be submitted in an Evidentiary Hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the Evidentiary Hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended.
- (b) Where a Participant intends to use a Document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (other than Documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce Documents), the Participant intending to use such Document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at a Testimonial Hearing.
- (c) Compliance Staff shall file the Documents it intends to offer into evidence as its direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, first. The Registered Entity shall file the Documents it intends to offer into evidence as its direct case, which also may be responsive to Staff's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, second. Staff shall file as its rebuttal case the Documents it intends to offer into evidence in response to

the Registered Entity's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, third.

(d) If appropriate due to the number and/or complexity of the issues, the Hearing Officer may allow for the Registered Entity to submit a rebuttal case that responds to Staff's rebuttal case, in which event the Hearing Officer shall also allow Staff to submit a surrebuttal case that responds to the Registered Entity's rebuttal case.

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

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

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

1.5.10 Protective Orders

(a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of any non-Participant ordered to produce Documents, information or testimony, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.

(b) The following types of information will be considered entitled to protection through a protective order:

- (i) Confidential Business and Market Information, including information that is proprietary, commercially valuable, or competitively sensitive;
- (ii) Critical Electric Infrastructure Information;
- (iii) Critical Energy Infrastructure Information;

- (~~iii~~iv) 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;
- (vi) audit work papers;
- (vii) investigative files or Documents that would disclose investigative techniques of Staff, any ~~Compliance Enforcement Authority~~CEA, 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 Compliance Committee

(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 Compliance Committee 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 Compliance Committee 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 Compliance Committee, 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 Compliance Committee, 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 Compliance Committee.

(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 Compliance Committee 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 Compliance Committee appropriate. If the Hearing Body determines that the proposed question should be certified to the Board of Trustees Compliance Committee, 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 Compliance Committee may decide to reject a proposed certification from a Hearing Body.

(f) If the Board of Trustees Compliance Committee 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 Compliance Committee's 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 CEA'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~~CEA.
 - (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~~CEA.
 - (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 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 Hearing Body may extend this deadline for good cause and shall provide written notice of any extension to all Participants. 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~~CEA, 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~~CEA's settlement procedures, provided, that (i) the ~~Compliance Enforcement Authority~~CEA may decline to engage in or continue settlement negotiations after a ~~Possible Violation~~potential noncompliance or Alleged Violation becomes a Confirmed Violation, and (ii) the ~~Compliance Enforcement Authority~~CEA, 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~~CEA 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 ~~Compliance Enforcement Authority~~CEA 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~~CEA within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

(c) If the ~~Compliance Enforcement Authority~~CEA has adopted the Consolidated Hearing Process under Rules of Procedure Section 403.15B, it must forward a request for a Remedial Action Directive hearing to NERC within one (1) business day of receiving the request.

(d) 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.

Attachment 9

Submitted Comments and Consideration of Comments

Submitted Comments

**COMMENTS OF THE
AMERICAN PUBLIC POWER ASSOCIATION
AND THE
LARGE PUBLIC POWER COUNCIL
ON PROPOSED CHANGES TO
NERC RULES OF PROCEDURE AND ASSOCIATED APPENDICES
(Posted November 2, 2020)**

Dated: December 18, 2020

The American Public Power Association (APPA)¹ and the Large Public Power Council (LPPC)² provides these comments on the Proposed Changes to the NERC Rules of Procedure (ROP) and associated Appendices posted for comment on November 2, 2020. In particular, these comments respond to proposed changes to ROP Section 400 (Compliance Monitoring and Enforcement), and ROP Appendix 4C (Compliance Monitoring and Enforcement Program (CMEP)).

As a general matter, APPA and LPPC support NERC's objective to revise ROP Section 400 and Appendix 4C (CMEP), with an eye toward crystalizing within these documents key features and concepts underlying a robust, risk-based compliance monitoring and enforcement process.

As NERC moves ahead with refinements to the risk-based compliance monitoring and enforcement process, embedded in the CMEP, APPA and LPPC emphasize that further clarity regarding the applicable procedures is essential. Specifically, APPA and LPPC believe that NERC should consider related risk processes taking shape within NERC's Reliability, Security and Technology Committee (RSTC) and the Reliability Issues Steering Committee. In particular, APPA and LPPC point to *The Framework to Address Known and Emerging Reliability and Security Risks* (Framework), dated Sept. 2020, which NERC and stakeholders considered in connection with the Board of Trustees' 4Q Open Meeting on November 5, 2020. The Framework is intended to guide the ERO in the prioritization of risks and to provide guidance on application of ERO policies, procedures and programs. In furtherance of NERC's risk identification and prioritization objectives, the Framework contemplates developing an ERO risk registry among other things to house identified and emerging risks being monitored. Once the Framework and risk registry are established, at that point it seems sensible to begin the work

¹ APPA is the national service organization representing the interests of not-for-profit, state, municipal, and other locally owned electric utilities throughout the United States. More than 2,000 public power systems provide over 15 percent of all kilowatt-hours sales to ultimate customers and serve over 49 million people, doing business in every state except Hawaii. Over 250 public power utilities are Registered Entities subject to compliance with mandatory reliability standards.

² LPPC represents 27 of the largest state and municipally-owned utilities in the nation. LPPC's members are located throughout the nation, both within and outside the boundaries of regional transmission organizations and independent system operators. The members comprise the larger, asset-owning utilities in the public power community, owning approximately 90 percent of the transmission assets owned by non-federal public power entities. LPPC members are also members of APPA.

of revising and refining ROP Appendix 4C (CMEP) to incorporate the risk-based decision-making process, with an eye toward this risk registry for possible guidance. Attempting to revise the CMEP sooner, without these important guidelines in place, seems premature.

While the public power community strongly supports NERC's move to risk-based compliance, it vigorously urges NERC to provide further clarity regarding the risk framework process, including the risk registry. Otherwise, stakeholders will be left with little insight and clarity into how the CMEP views risks and how that view ultimately will be applied in accordance with the ROP.

Mindful of these concerns with respect to the CMEP changes being proposed at this time, and the need for additional clarity as to how the Framework eventually will work, and ultimately how it will interact with the CMEP, below APPA and LPPC identify a number of revised ROP Section 400 and Appendix 4C sections where further clarification is needed. In addition, the comments below identify proposed ROP Section 400 and Appendix 4C revisions with which APPA and LPPC generally agree, outline APPA's and LPPC's concerns with other of the proposed changes, and offers for NERC's consideration potential revisions regarding the same.

APPA and LPPC note that its silence on other issues should not be construed as agreement with the remainder of the proposed ROP changes. Moreover, APPA and LPPC reserve the right to supplement these comments at a later date.

I. Comments on proposed changes to NERC Rules of Procedure, Section 400 – Compliance Monitoring and Enforcement

1. ROP Section 402 – NERC Oversight of the CMEP

NERC proposes to modify Section 402.1 to specify that NERC oversight of the CMEP “shall be accomplished through metrics, risk-based monitoring activities, and performance reports.” APPA and LPPC believe there is value in approaching NERC oversight of the CMEP in a way that looks to risk-based monitoring activities underway at the Regional Entity level. And as a general matter with respect to risk-based monitoring activities, APPA and LPPC support an approach to risk-based compliance monitoring that favors consistent application across the Regional Entities, while at the same time ensuring that the Regional Entities are not overly bounded in a way that would prohibit them from exercising a level of discretion that accounts for regional differences.

However, the reference to “metrics” in proposed revised ROP Section 402.1 lacks clarity as to where such metrics reside, how they are developed, what they entail, and to whom they apply. Additional information and clarification on this point will be important to ensure thorough CMEP oversight, and to ensure that auditors and registered entities are focusing time and effort where it is most appropriate.

2. ROP Section 403 – Required Attributes of Regional Entity Implementation of the CMEP

NERC proposes to modify what appears to be Section 403.10 (previously numbered Section 403.11), entitled “Compliance Monitoring of Bulk Power System Owners, Operators, and Users”. APPA and LPPC support NERC's proposed revision to Section 403.10, which

makes it clear that each Regional Entity will “maintain and implement” a program “for risk-based compliance monitoring...” Importantly, this revision specifies in ROP Section 400 the development of, use by Regional Entities of risk-based compliance monitoring programs – programs that are a vital feature of risk-based reliability compliance.

NERC further proposes to delete subsection (1), which would remove the requirement that Compliance Audits will be performed “at least once every three years” for entities registered as Balancing Authorities, Reliability Coordinators, or Transmission Operators. APPA and LPPC support the concept embodied in this change, which will instill in the relevant Compliance Enforcement Authority (CEA) discretion to conduct Compliance Audits of BAs, RCs and TOPs at intervals longer than “at least once every three years.” In the view of APPA and LPPC, a risk-based approach to compliance monitoring that is consistently applied across regions, coupled with the ability for Regional Entities to extend the Compliance Audit period beyond three years, along with a more clearly-defined understanding of applicable metrics in this space, holds great potential to move the CMEP in a positive direction.

The language proposed for deletion subsection (1) also would remove the requirement that “[f]or other Bulk Power System owners, operators, and users on the NERC Compliance Registry, Compliance Audits shall be performed on a schedule established by NERC.” APPA and LPPC members, however, note the importance and value of having a Compliance Audit schedule and an Annual Audit Plan that is made available to registered entities sufficiently in advance of those audits, to enable entities adequate lead-time to make all necessary internal staffing, resource allocation and capital planning decisions, and otherwise to prepare for these audits. While APPA and LPPC do not necessarily object to the removal of the requirement that Compliance Audits be performed “on a schedule established by NERC,” APPA and LPPC believe that Regional Entities should develop and maintain audit schedules, and make such schedules available to registered entities sufficiently in advance, with as much notice as possible, and in no event less than nine months prior to the start of a Compliance Audit. APPA and LPPC members endeavor to be “audit ready” at all times, however there is a difference between having relevant documents and materials in an “audit ready” state, *i.e.*, organized and catalogued internally within an organization, and having those materials in a “delivery ready” state, *i.e.*, organized for delivery to the Regional Entity as part of the Compliance Audit process. The latter requires sufficient time and resources, and advance notice is essential. Moreover, providing adequate advance notice to registered entities will have the ancillary benefit of improving the overall quality and efficiency of the Compliance Audits themselves. Namely, sufficient advance notice will give registered entities time to ensure high quality evidence is prepared, compiled and assembled into a better “delivery ready” product that ultimately will be more valuable to audit teams, and thus will facilitate a well-organized and efficient Compliance Audit.

II. Comments on proposed changes to NERC Rules of Procedure, Appendix 4C – Compliance Monitoring and Enforcement Program (CMEP)

1. CMEP Section 3.0 – Annual Implementation Plan

NERC proposes to revise Section 3.0 to include a new provision, which states:

NERC, with input from the Regional Entities, stakeholders, and regulators, shall identify risk elements and related NERC Reliability

Standards and Requirements to be considered in the annual ERO CMEP Implementation Plan for oversight of Registered Entities. In order to identify risk elements, NERC will consider data including, but not limited to: emerging risks; 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.

APPA and LPPC generally support this approach to developing the annual CMEP Implementation Plan. However, the provisions of this Section 3.0 would benefit from additional clarification. In particular, while NERC identifies what data it will consider in order to identify risk elements each year, there is no clear indication as to how NERC will consider such data in identifying risk elements. APPA and LPPC urge NERC to provide additional clarity on this point.

2. CMEP Section 4.1 – Compliance Audits

NERC proposes to revise Section 4.1.1 (Compliance Audit Process) to no longer to require the posting of an Annual Audit Plan. NERC states that this proposed change reflects use of Compliance Oversight Plans (COPs), which provide an indication of the frequency of monitoring activities, along with the existing 90-day notice requirement for a Compliance Audit (or any other notice period for a monitoring activity).

As an initial matter, APPA and LPPC members support the use of COPs, and in particular find significant value in the appendices included with such COPs, which lend clarity to entities around the Reliability Standards and requirements to which they will be audited, and for which self-certifications will be required. These COP appendices are invaluable in aiding registered entities to prepare for upcoming Compliance Audits and self-certifications, and many APPA and LPPC members have come to rely on such appendices for these reasons. Going forward, APPA and LPPC urge that NERC and the Regional Entities continue to employ COPs which contain these appendices.

With respect to the proposed changes advanced by NERC in Section 4.1, APPA and LPPC oppose elimination of an Annual Audit Plan, without some other means through which registered entities reliably can be notified of upcoming Compliance Audits with sufficient advance notice. As noted above, it is important to APPA and LPPC members that some form of audit schedule be made available well in advance of Compliance Audits, to ensure registered entities have adequate time to make internal staffing and resource allocation decisions, to thoughtfully plan and schedule annual capital improvement and other projects within the company, and otherwise to prepare for upcoming audits. While current CMEP Section 4.1.1 includes a 90-day notice requirement for a Compliance Audit, 90 days is not sufficient time for registered entities to undertake the necessary internal planning and preparation for such audits. APPA and LPPC believe that Regional Entities should be required to develop and maintain audit schedules, and to make such schedules available to registered entities sufficiently in advance of Compliance Audits, with as much notice as possible, and in no event less than nine months prior to the start of a Compliance Audit, as discussed above, on page 3.

NERC proposes to revise Section 4.1.3 (Scope of Compliance Audits) to clarify the shift from Compliance Audits examining all Reliability Standards to risk-based Compliance Audits focusing on the most significant risks to reliability and security and the registered entity's specific risks. APPA and LPPC support changes to the CMEP which reflect this important shift in focus as to Compliance Audits. However, predictability and transparency with respect to the scope of Compliance Audits is essential, including the ways in which Regional Entities go about determining the scope of Compliance Audits. Such predictability and transparency serve as important checks against capricious scoping of audits. Indeed, use of Inherent Risk Assessments and internal controls to appropriately scope audits are central to an effective risk-based compliance monitoring and enforcement process, as is Regional Entity discretion. But the audit scoping process should be transparent and predictable for registered entities, and APPA and LPPC urge NERC to include language in the CMEP with this objective in mind.

NERC further proposes to revise Section 4.1.3 (Scope of Compliance Audits) to reflect that the evidence retention period for Compliance Audits will no longer be for the entire period covered by the Compliance Audit. The proposed change to CMEP Section 4.1.3.2 reflect that 1) the evidence retention period for activities performed at least once every three calendar years will be the lesser of "three years or the retention period described in Reliability Standards" and 2) for activities performed on a periodic basis of greater than three calendar years, the CEA may request evidence showing performance at the last required interval and evidence establishing the prior intervals. Additional clarification may be warranted regarding the retention periods outlined in Section 4.1.3.2 – in particular the evidence retention period for Reliability Standard Requirements specifying activities to be performed on a periodic basis of greater than three calendar years (as outlined in the second bullet at the top of page 7 of the redlined CMEP), which contemplates "evidence showing that the required performance was made at the last required interval, with evidence of previous testing intervals." APPA and LPPC are concerned by proposed evidence retention language here that appears to require entities to retain evidence going back to "previous testing intervals," which is an overly burdensome proposition for many registered entities, particularly if such evidence involves testing records going back to prior intervals. It is unclear precisely what kind of evidence of previous testing intervals would be required. Absent clarification on this point, it seems registered entities may be required to retain *all* records of *all* previous intervals, as a precaution in case the CEA requests such records. That is an overly burdensome proposition for registered entities.

NERC proposes to revise Section 4.1.5 (Compliance Audit Reports) to state that "[t]he Registered Entity has ten (10) business days to comment on the draft Compliance Audit report and to identify Confidential Information proposed for redaction." APPA and LPPC believe that additional clarification may be useful around the scope of comments that a registered entity may submit on the draft Compliance Audit report under this section.

3. CMEP Section 4.2 – Self-Certifications

NERC proposes to revise Section 4.2.1 (Self-Certification Process) among other things to eliminate the posting of a Self-Certification schedule. The proposed changes to this section also prescribe with respect to the Self-Certification process that the CEA request the registered entity to make a Self-Certification "[a]t least thirty (30) days in advance." According to NERC, Self-Certifications are part of a risk-based approach to compliance monitoring detailed in a registered

entity's COP, and removal of a posted Self-Certification schedule allows flexibility to initiate Self-Certifications as needed based on emerging identified risks.

APPA and LPPC agree there may be value to the flexibility NERC describes. However, this must be balanced against registered entities' need for certainty and predictability with respect to schedule and the timing of their Self-Certifications. Such predictability may be achieved either through the posting of a Self-Certification schedule, or through COPs that are sufficiently detailed and closely adhered to by Regional Entities. Indeed, so long as COPs provided by the Regional Entities are clear and include appendices outlining those standards for which self-certification will be required looking several years out, and provided Regional Entities closely follow to these COPs, a posted Self-Certification schedule may not be needed. But this much is clear: informing registered entities a mere thirty days in advance of the need to make a Self-Certification, as the proposed CMEP changes contemplate, does not provide registered entities with sufficient time to prepare and make such reports. APPA and LPPC urge NERC and the CEAs to ensure registered entities have as much prior notice as possible regarding Self-Certifications.

4. CMEP Section 4.4 – Compliance Investigations

NERC proposes to revise footnote 1 in Section 4.4, in which it enumerates examples of situations in which NERC may decide to lead a Compliance Investigation, as relates to NERC's reservation of rights under Section 4.4 to assume leadership of a Compliance Investigation. In revised footnote 1, NERC proposes to delete one such situation in which NERC may decide to lead a Compliance Investigation: "where the potential noncompliance is related to the Regional Entity or one of its affiliates, divisions, committees, or subordinate structure." While APPA and LPPC do not necessarily oppose this change, the genesis and significance of the revision is unclear. APPA and LPPC encourage NERC to provide additional clarification.

5. CMEP Section 4.0 – Compliance Monitoring Process; Section 4.5A – Self-Logging; CMEP Section 4.8 – Preliminary Screen³

NERC proposes to revise Section 4.0 (Compliance Monitoring Process), Section 4.5A (Self-Logging) and Section 4.8 (Preliminary Screen) to exempt self-logged items from the Preliminary Screen and subsequent reporting and disposition processes. LPPC supports these changes, believes it is appropriate to exempt self-logged items from the CMEP Section 8.0 reporting requirements, and further believes it is appropriate for a potential noncompliance logged in this manner to be reviewed by the CEA, without further action required.

The very nature of self-logged items are such that they are limited to potential noncompliance posing a minimal risk to the reliability of the Bulk Power System, and involve assets having a limited impact on the system. By virtue of this alone, it is logical to exempt such minimal risk self-logged items from the Section 8.0 reporting requirements, as NERC proposes. Reporting to NERC and FERC is more appropriately reserved for instances of potential noncompliance posing a greater risk.

³ Comments on this section 5 (CMEP sections 4.0, 4.5(A), 4.8) are sponsored only by LPPC.

Moreover, registered entities awarded self-logging privileges have successfully demonstrated to the CEA the ability to identify, correct and assess risk in a timely manner due to their having robust internal controls and processes. The self-logging program in turn empowers such registered entities to monitor their own compliance while focusing resources on more serious risks. As a result, this framework supports a streamlined approach to registered entities' minimal risk issues. Exempting self-logged items from reporting under Section 8.0 is consistent with this approach, and aligns with the goal of streamlining disposition of minimal risk issues.

Indeed, it would be antithetical to the entire construct underlying the self-logging program to require reporting to NERC and FERC of minimal risk self-logged items, and imposing such a requirement could undermine to a meaningful degree the value proposition and benefits to registered entities using this program. Elevating self-logged items to NERC and FERC creates additional opportunities for enforcement review of minimal risk issues intended under the self-logging program to be addressed at the Regional Entity level, without requiring further action. Exposing registered entities to such a threat of NERC or FERC enforcement review would weaken the streamlined nature of self-logging, and could damage registered entities' faith that their self-logged items will be resolved expeditiously by the Regional Entity, thus allowing registered entities to focus time and attention on more serious risks. And it seems natural that under a compliance monitoring and enforcement program grounded in a risk-based approach, reporting of instances of potential noncompliance to NERC and FERC be limited to those instances posing a greater risk.

6. CMEP Section 4A.1 – Compliance Exception Process

APPA and LPPC support the proposed changes to Section 4A.1 (Compliance Exception Process), which revise these provisions to explain that the CEA would identify minimal risk noncompliance appropriate for Compliance Exception treatment, and designate the noncompliance as a Compliance Exception, thereby closing the noncompliance. APPA and LPPC believe the proposed changes to this section afford CEAs the necessary discretion to make such determinations, which is essential to effective enforcement discretion.

APPA and LPPC further support proposed changes to this section aimed at clarifying the treatment of Compliance Exceptions in a registered entity's compliance history. As proposed by NERC, the CEA would look at the registered entity's overall compliance history (versus considering each prior Compliance Exception individually) to determine whether that entity should continue to qualify for Compliance Exception treatment. However additional clarification may be in order. Namely, when assessing a registered entity's "overall compliance history" in connection with the Compliance Exception Process, how far back will the CEA look? On this point, APPA and LPPC see value in additional clarification, and supports consistent interpretation and application of such review across CEAs. In addition, to the extent NERC clarifies its CMEP provisions related to Compliance Exceptions, it seems logical to do so by drawing upon relevant language from FERC's order approving NERC's Reliability Assurance Initiative (RAI) and Compliance Exception process. Specifically, FERC conditioned its approval of RAI and use of Compliance Exceptions, among other things, on "the relevant Regional Entity assessing any subsequent noncompliance of the same or closely-related Standards and Requirements to determine whether the registered entity should continue to qualify for compliance exception treatment regarding the subject of the repeat noncompliance."

North American Electric Reliability Corp., 150 FERC ¶ 61,108, P 45 (2015). Adopting the same of substantively similar language in this CMEP section would add clarity.

7. CMEP Section 5.0 – Enforcement Actions

NERC proposes to revise Section 5 (Enforcement Actions) among other things to remove language that currently permits a registered entity that “believes that a request for Documents, data or information [from the CEA] is unreasonable” to “request a written determination from the NERC general counsel.” This ostensibly removes any ability for the registered entity to raise such objections with data requests proffered by the CEA, and to seek a determination from the NERC general counsel regarding the same. APPA and LPPC believe it is appropriate to retain this language, which APPA and LPPC see not only as consistent with CMEP Section 4, but also an important feature and due process protection enshrined in the Enforcement Actions provisions of the CMEP, to protect against potential CEA abuse with respect to such data request.

8. CMEP Section 5.5 – Hearing Process for Compliance Hearings

NERC proposes to revise Section 5.5 (Hearing Process for Compliance Hearings) to include language which provides that the CEA hearing process is set forth in CMEP Attachment 2 “or the hearing procedure in effect for the CEA.” It is unclear to what hearing procedures the proposed text refers, as well as if and how such “hearing procedure in effect for the CEA” differs from the Attachment 2 Hearing Procedures. It is the understanding of APPA and LPPC that the hearing procedures set forth in CMEP Attachment 2 govern the practice and procedure for such hearings before the CEA.

9. CMEP Section 6.1 – Requirement for Submission of Mitigation

NERC proposes to revise Section 6.1 (Requirement for Submission of Mitigation) to require formal Mitigation Plans only at the request of the CEA. APPA and LPPC strongly support this approach to mitigation, as well as NERC’s general preference that registered entities employ mitigating activities to remediate a potential noncompliance. In the view of APPA and LPPC, this approach will greatly reduce the burden of preparing a formalized Mitigation Plan in most instances, and will facilitate timelier completion of mitigating activities in order to address instances of potential noncompliance more quickly and efficiently.

10. CMEP Section 6.2 – Content of Mitigation Plans

APPA and LPPC support NERC’s proposal to revise Section 6.2 (Contents of Mitigation Plans) to state that that the CEA “may agree to a mutually acceptable timeline for completion of milestones, typically no more than three (3) months.” The revision will afford CEAs added flexibility in this regard, which is welcome.

11. CMEP Section 6.4 – Review and Acceptance or Rejection of Proposed Mitigation Plans

With respect to Section 6.4 (Review and Acceptance or Rejection of Proposed Mitigation Plans), APPA and LPPC propose the following revisions to the second paragraph of that section, regarding acceptance or rejection by the CEA of a revised Mitigation Plan:

The CEA will notify the Registered Entity within twenty (20) business days after receipt of a revised Mitigation Plan whether the CEA 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 CEA does not provide such notification to the Registered Entity within twenty (20) business days after receipt of a revised Mitigation Plan, the revised Mitigation Plan will be deemed accepted.

APPA and LPPC believe this revision will ensure that Section 6.4 sets forth a consistent approach for treatment of proposed and revised Mitigation Plans, such that if the CEA does not accept or reject a Mitigation Plan (regardless of whether it is a proposed Mitigation Plan or a revised Mitigation Plan) within the time periods prescribed in Section 6.4, those Mitigation Plans will be deemed accepted.

Moreover, APPA and LPPC support NERC's proposed changes to Section 6.4 (Review and Acceptance or Rejection of Proposed Mitigation Plans) to eliminate the requirement for public posting of Mitigation Plans for related Notices of Penalty. APPA and LPPC agree with NERC's assessment that dispositions of noncompliance include descriptions of the mitigating activities.

12. CMEP Section 6.5 – Implementation of Mitigation Plans

NERC proposes to include a new Section 6.5 (Implementation of Mitigation Plans) to the CMEP. APPA and LPPC generally support the new Section 6.5.

New Section 6.5 (Implementation of Mitigation Plans) provides that “[a] request for an extension of any milestone or the completion date of the accepted Mitigation Plan by the Registered Entity must be received by the CEA at least five (5) business days before the original milestone or completion date.” APPA and LPPC appreciate the importance of establishing a date by which registered entities should submit such extension requests. But equally critical is the need for registered entities to have flexibility to submit such extension requests closer to the original milestone or completion date, which may be necessary due to unforeseen last minute issues that might arise, which could affect registered entities' ability to meet those dates. For this reason, APPA and LPPC encourage NERC to include language in this section affording CEAs discretion to accept a registered entity's request for extension of any milestone or the completion date that is received by the CEA less than five (5) business days before the original milestone or completion date. Alternatively, APPA and LPPC propose that this section be revised to afford CEAs discretion to accept a registered entity's late-filed extension request, for “good cause.”

NERC in the fourth paragraph of new Section 6.5 (Implementation of Mitigation Plans) also proposes to include language which provides: “If a Mitigation Plan submitted by a Registered Entity is rejected by the CEA or the Hearing Body in accordance with Section 6.4, 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.” APPA and LPPC strongly oppose such language. Registered entities working to develop Mitigation Plans do so in good faith, with an eye towards promptly addressing any instances of potential noncompliance, and preventing any

such future instances. Mitigation Plan details may take time and careful consideration to shape in a way that ensures a most appropriate and effective resolution to an instance of potential noncompliance. Registered entities – if a CEA or Hearing Body rejects a Mitigation Plan – should not be subject to any findings of violation during the period the Mitigation Plan was under consideration and to imposition of any Penalties or sanctions imposed for such violations.

Moreover, the proposed language in the fourth paragraph of Section 6.5, as currently worded, will subject registered entities to penalties or sanctions “during the period the Mitigation Plan was under consideration,” if that plan ultimately is rejected by the CEA. However registered entities have no control over the length of time a CEA considers a Mitigation Plan and it seems plausible that a CEA in some instances may not timely reject a Mitigation Plan, thus subjecting a registered entity to increased penalties during this period of time. APPA and LPPC object to this proposed language, and believe it is inequitable to subject registered entities to penalties during this consideration period.

13. CMEP Section 6.6 – Completion/Confirmation of Implementation of Mitigation Plans

APPA and LPPC support the proposed revisions to the second paragraph of Section 6.6. These changes provide that registered entities, upon completion of Mitigation Plans, “shall provide to the CEA certification that all required actions described in the Mitigation Plan have been completed and shall retain Documents, data and information sufficient for the CEA to verify completion.” The change makes it clear that registered entities must “retain” such documents and information, and no longer are required to “include” such materials with the certification provided to the CEA. This change will meaningfully reduce the burden previously imposed on registered entities with respect to preparing such certifications.

14. CMEP Attachment 1 – Process for Non-Submittal of Requested Data

APPA and LPPC suggest that sections addressing the provision to FERC, the ERO and the applicable Regional Entity of such information be refined to make it clear that a registered entity “shall be required to provide Documents, data or information only in the manner in which that Registered Entity keeps such Documents, data or information in the usual course of its business.” This clarification will ensure that registered entries are not made to provide information in a format other than that in which it normally keeps such information, and will make it clear that registered entities cannot be compelled to create evidence in a manner or format requested by another entity. Requiring registered entities to create evidence in this manner is a very burdensome proposition, and one which can be avoided with relative ease by revising the CMEP to clarify this point.

From: [Johnson, Jamie](#)
To: [BOPCComments](#)
Subject: CAISO Comments - Proposed Revisions to the NERC Rules of Procedure
Date: Thursday, December 17, 2020 5:57:36 PM

Hello,

CAISO has reviewed the proposed revisions to the NERC Rules of Procedure and very much appreciate the effort to modify the Rules of Procedure to align with more of a risk based approach. We have comments related to the CMEP Appendix 4C "Compliance Audits" and "Mitigation Plans".

| Appendix 4C Section | Proposed Change | CAISO's Comment |
|---------------------|--|--|
| Compliance Audits | NERC proposes no longer to require the posting of an Annual Audit Plan given (A) the use of Compliance Oversight Plans (COPs) which provide an indication of the frequency of monitoring activities, coupled with (B) the existing 90-day notice requirement for a Compliance Audit (or any other notice period for a monitoring activity). NERC does not propose to change the CEA's obligation to provide schedules of planned audits and any changes to such planned audits to NERC, FERC, and other Applicable Governmental Authorities. | CAISO finds the posting of the annual audit plan very useful for planning purposes and feels 90 days is insufficient notice to plan for an audit for a utility of our size. Sole reliance on the COP as an indication of the frequency of monitoring activities is not adequate since our COP indicates a target interval of "every 1-3 years" for compliance audits. This is not specific enough for planning purposes. Additionally, CAISO received its most recent COP on May 15, 2020, and the audit notification letter on May 26, 2020, for its compliance audit scheduled to commence on August 24, 2020. |
| Mitigation Plans | NERC proposes to eliminate the requirement to provide quarterly updates on the implementation of Mitigation Plans given the baseline expectation to complete mitigation milestones within 3 months, with CEA flexibility to grant extensions. | It's not clear what the expectation is regarding the elimination of the quarterly updates on the implementation of mitigation plans. Will entities be expected to request extensions when implementations take longer than 3 months, for each 3 month period? How will this process work? |

Thank you very much, and please let me know if there are any questions.

Jamie Johnson
Compliance Analyst Lead RC Operations
Compliance & Corporate Affairs



O: 916.608.7378 C: 916.936.7542
250 Outcropping Way, Folsom, CA 95630



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December 17, 2020

**COMMENTS OF PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY ON
PROPOSED CHANGES TO NERC RULES OF PROCEDURE AND ASSOCIATED
APPENDICES (Posted November 2, 2020)**

The Public Utility District No. 1 of Chelan County (CHPD) provides these comments in response to the Notice of Proposed revisions to the NERC Rules of Procedure (ROP) and Request for Comments posted on November 2, 2020. CHPD's silence on proposed changes to the ROP not specifically discussed in this document should not be construed as support for or opposition to the remainder of proposed ROP changes.

Comments on proposed changes to the Rules of Procedure:

In general, CHPD supports changes outlined in the proposed revision to Section 400 and Appendix 4C of the ROP as well as the positions and comments submitted by the Large Public Power Council (LPPC) regarding the proposed revisions to the ROP. CHPD would like to specifically remark on the following items.

NERC Rules of Procedure Section 403 – Item 11

NERC proposes to delete the item listed as 11.1 (prior to changes) from Section 403 of the ROP. In doing so, NERC proposes to grant the Compliance Enforcement Authority (CEA) discretion over Compliance Audit timing. The proposed changes remove the requirement to perform Compliance Audits on a three-year periodicity for entities registered as Balancing Authorities, Reliability Coordinators, and Transmission Operators.

CHPD strongly supports this change and encourages implementation as an important move toward a robust risk-based approach to compliance monitoring. CHPD encourages the implementation of this change without delay. In addition to the benefits outlined in the LPPC response, this change supports a culture of compliance at the registered entity and provides an incentive to maintain this culture. This change supports the reliability of the Bulk Power System (BPS) by encouraging registered entities to focus resources and capital on risk-based improvement opportunities incentivizing improved performance by reducing regulatory burden.

**NERC Rules of Procedure Appendix 4C – Compliance Monitoring and Enforcement Program (CMEP)
Section 4.1**

NERC proposes revising CMEP Section 4.1.1, removing the requirement to post an Annual Audit Plan. CHPD voices concern with eliminating the use of an Annual Audit Plan without providing a mechanism to afford registered entities ample notification of upcoming audits. CHPD is concerned the 90-day notice requirement will be inadequate to budget and plan resources needed for Compliance Audit preparation and proposes NERC provide a mechanism for advance notice beyond 90-days to allow registered entities time to adequately plan and prepare for Compliance Audits. CHPD supports the continued use of Compliance Oversight Plans (COPs) as a tool for providing registered entities insight into Reliability Standards and requirements which will be areas of focus in upcoming audits and self-certifications.

CHPD echoes LPPC's support for the continued inclusion of existing appendices within the COP, which registered entities often utilize heavily in resource planning.

EEI Comments

Rules of Procedures

Sections 400, 600, 900, and 1500 and Appendices 2 and 4C

December 18, 2020

EEI appreciates the opportunity to provide the following feedback on the proposed revisions to the NERC Rules of Procedure (ROP) Sections 400, 600, and 900 and Appendices 2 and 4C.

NERC ROP Section 400

- General comment: “staff” is both capitalized and lower case in ROP. Should this be consistent throughout the ROP?
- **Section 401.2:** EEI recommends NERC and Regional Entities (REs) be added back to this section. While the Reliability Standards are not applicable to NERC and the REs, the ROP has broader applicability than Reliability Standards and includes obligations for NERC and the REs.
- **Section 401.3:** EEI recommends the phrase “in the Reliability Standards and compliance reporting procedures” be maintained. If it is removed, NERC and the CEA would be able to define data retention periods outside the Reliability Standards. This could lead to conflicts with the data retention periods as defined in the Reliability Standards. If NERC intends to proceed with the Standard Efficiency Review (SER) Phase 2 Evidence Retention Team’s Recommended Evidence Retention Schemes, the data retention periods can be adjusted accordingly within the Reliability Standards and approved by industry ballot.
- **Section 401.6:** It appears there is an extra “with” in first sentence; something is missing from sentence.
- **Section 401.10:** EEI recommends retaining the last sentence of the second paragraph of this section that begins, “Information that would jeopardize...” because it is not clear if the language is covered elsewhere.
- **Section 401.11:** “NERC shall, subject to the requirements, rules, and regulations of the Applicable Governmental Authority and the confidentiality requirements of these Rules of Procedure, publicly post information on each such noncompliance... on its website.” Please clarify whether this means NERC will post information about the violations but not the violations themselves? If it has a different meaning, EEI suggests clarifying.
- **Section 401.11.2:** EEI recommends retaining this section.
- **Section 402.8.1:** Since this section also addresses Audit team members, which can include non-NERC or non-Regional participants, and a Receiving Entity is NERC or a Region, EEI recommends that codes of conduct and confidentiality for non-NERC or non-Regional participants be addressed in this section.
- **Section 402.8.2:** The section does not address the actions that would cause the loss of access to Confidential Information. EEI recommends clarifying this section.

- **Section 402.8.3:** EEI recommends retaining this section because it is not clear if the language is covered elsewhere.
- **Section 403.6:** This section could be read to mean that all of the regional staff must be able to perform the compliance monitoring and enforcement function. EEI recommends clarifying which staff are responsible for CMEP activities.
- **Section 403.6.3:** EEI recommends that this section include the confidentiality expectation of independent SMEs.
- **Section 403.9:** Should the sub-bullets start with the number 9 versus 10?
- **Section 403.9:** Should the subsection numbering be updated to reflect section 9 and not 10?
- **Section 403.9.10.6:** EEI recommends clarifying the intent of changing the officer certification from “compliance data” to “self reports” including documents, data, and information provided. While registered entities provide adequate and accurate information in a Self-Report to allow efficient and timely resolution of instances of noncompliance, registered entities often submit the information based on preliminary information, as soon as practical and provide more comprehensive information as it becomes known. The implication is that more information may come to light after filing the self-report and thus may contain more complete information. Thus, to require officer certification of information as accurate is burdensome because at the time of the self-report not all the information may be available to satisfy a certification of accurate data, especially when registered entities submit self-reports out of an abundance of caution and with more facts yet to be discovered. Therefore, officer certification of information provided with a self-report may not be appropriate.
- **Section 406.3:** EEI recommends retaining original language to maintain NERC transparency.
- **Section 406.4:** EEI recommends adding to the end “, and shall post both the response and the plan for public viewing in accordance with Appendix 4C.”
- **Section 408.1:** Registered entities should be able to challenge findings not only from audits, but other monitoring processes (e.g., where the CEA makes determination of a non-compliance when the entity self-certifies that it is compliant. EEI recommends retaining this language.

NERC ROP Appendix 2

- EEI recommends updating the definition of Special Protection System to match the current NERC Glossary of Terms definition, which added “Also called Remedial Action Scheme.” The Remedial Action Scheme definition should be added to Appendix 2.
- CIP Senior Manager definition: EEI recommends clarifying adherence to the “applicable” requirements within the NERC CIP Standards. Additionally, recommend removing “NERC” from phrase “NERC CIP Standards” to be consistent with other ROP changes.

- Delegate definition: EEI recommends removing the reference to the specific Reliability Standard and replacing with pursuant to applicable CIP Standards.
- The term “annual audit plan” was deleted. EEI recommends retaining the obligation to provide registered entities an audit schedule and oversight plan for the upcoming year.

NERC ROP Appendix 4C

- **General comment:** For each of the monitoring processes, the requirement to conduct a preliminary screen was removed. EEI recommends the requirement to conduct a preliminary screen be added back to the monitoring processes where this step is required.
- **Section 2, Pg. 2:** EEI opposes this change and requests NERC retain “NERC shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.” This should remain in the ROP to ensure transparency because this is the backbone for CMEP and a critical resource for industry to understand regulatory requirements, including timing for phased implementation standards.
- **Section 3, Pg. 2:** EEI recommends input on the implementation plan should include NERC Standing Committees.
- **Section 4, Pg. 3:** ROP includes a requirement to comply with Applicable Governmental Authorities. EEI suggests deleting this duplicative statement.
- **Section 4, Pg. 3:** In the last paragraph, EEI recommends adding additional language to address the ability of the registered entity to retain certain sensitive information at the registered entity.
- **Section 4.1, Pg. 4:** Language about posting of audit guides was removed. Entities use the guides to develop self-assessments that would approximate NERC CMEP activities. Will NERC provide a similar resource and continue to post publicly?
- **Section 4.1.1, Pg. 4:** Language requiring REs to submit annual audit plans as part of the CMEP implementation plan was removed as well as the process and deadline for REs to notify an entity of the intent to audit. Registered entities rely on this information for planning, budgeting, and readiness for audits. The ROP should include a clear expectation that REs develop and share audit schedules and oversight plans with registered entities for the upcoming year.
- **Section 4.1.1, Pg. 4:** What does “regularly scheduled audit” mean with the removal of the three-year audit requirement? EEI recommends clarifying “regularly.”
- **Section 4.1.2, Pg. 5:** States audits are based on criteria established by NERC but there is no mention of the criteria or compliance oversight plans, including audit plans. EEI recommends providing additional clarity.
- **Section 3.2 and Section 3.3:** EEI recommends retaining information from these sections related to the development of an audit plan and timing for entities scheduled for an audit in the upcoming year.
- **Section 4.1.3.2, Pg.6:** Second bulleted item refers to “evidence of previous testing intervals.” EEI suggests making the language more generic, such as “evidence of

previous periodic performance.” This change would be more consistent with procedural rules as opposed to words in a standard, e.g. PRC-005 and use of the word “testing.”

- **Section 4.1.5, Pg. 10:** EEI recommends that the language indicate that the Registered Entity should have the ability to object to the publication of its own Confidential Information.
- **Section 4.1.5, Pg. 10:** CIP Audit information should not be publicly posted consistent with the FERC/NERC White Paper: Second Joint Staff White Paper on Notices of Penalty Pertaining to Violations of Critical Infrastructure Protection Reliability Standards, Docket No. AD19-18, September 23, 2020.
- **Section 4.5, Pg. 15:** Self report requires a description of the extent of noncompliance which may take additional time before entity can self report. The current self-report guide requires scope or extent of noncompliance, if known. EEI recommends NERC clarify this language.
- **Section 4A.1, Pg. 20:** Compliance exceptions are closed unless it is later determined that one of two conditions exist. This leaves uncertainty as to when a Compliance Exception is closed. EEI suggests the language be revised to have items closed at a date certain, and if mitigation is not completed or material misstatements are determined later, the RE can open a new matter to re-process based on the new information.
- **Section 4A.2:** EEI suggests adding to #4 that the RE provide the registered entity with the risk analysis supporting the CEA’s change of risk from minimal to moderate and an opportunity for review of the analysis.
- **Section 5, Pg. 22:** EEI recommends the concept of requesting a written determination from NERC’s general counsel in section 4 related to requests for data to determine compliance be retained in this section, consistent with section 4 and general due process principles.
- **Section 4.5A, Pg. 16:** EEI recommends this section be clarified to address the criteria for closing self-logs. For self-logging, it is unclear when self-log items are “closed” and no longer subject to further processing by the CEA. Since these are not screened as “Compliance Exceptions,” there is no provision for when these are closed.
- **Section 6, Pg. 34:** Opening section has no information and write up starts on section 6.1. Not sure if this is on purpose.
- **Section 8.2, Pg. 42:** This section contains a reference to “violation” in the body of the second to last paragraph. Should this be changed to “noncompliance” for consistency?
- **Section 9.2, Pg. 43:** This section requires a 5 year retention or as specified by FERC or another Applicable Authority (whichever is longer and where technically feasible) – our understanding was NERC and the regions were going to maintain information, data, etc. for the shortest period of time possible with the implementation of Align. Section 401.3 in ROP states that responsibility for defining data retention is now with the CEA rather than using a public process of standards or compliance reporting procedures. Will this create inconsistency in retention periods between regions?

- **Attachment 1:** EEI recommends the addition of the phrase “or does not work in good faith with the CEA in connection with a CMEP activity” should be clarified. It can be read to explain how one behaves when addressing a data request or as an expansion of this possible sanction to situations where the entity is deemed to be uncooperative.
- **Attachment 2, Section 1.3.1, (g) (1), Pg. 11:** Should violation be changed to noncompliance for consistency?

On behalf of the Midwest Reliability Organization's NERC Standards Review Forum (MRO NSRF) the following comments are provided concerning the 45-day ROP Comments period.

Section 400 and 1500.

1. No comments, agree with proposed updates.

Section 600 and 900

1. No comments, agree with proposed updates.

Appendix 2

1. Special Protection System definition should read as the NERC Glossary of Terms, see Remedial Action Scheme to show alignment between the ROP Appendix 2 and the NERC Glossary of Terms. In addition, if the term is revised in Appendix 2, we recommend making corresponding changes in the ROP sections (e.g.: Appendix 5B), that utilizes this term.

Appendix 4C

1. Section 4.1.1 Compliance Audit Process, second bullet;
 - At least ninety (90) days prior to commencement of a **regularly** scheduled Compliance Audit, the ~~Compliance Enforcement Authority~~ CEA 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 Documents, data, and information ~~including a completed NERC pre-Compliance Audit questionnaire.~~

Using the word "...regularly..." does not line up with the removal of 3 year "regularly" scheduled audits for BAs, TOPs and RCs. Recommend the "regularly" be removed for clarity. The CEA should annually post and inform all Registered Entity if they were selected for an Audit within each calendar year within the CMEP IP (similar to how Self-Certifications are posted). This would allow the CEA to "schedule" and make Registered Entities aware of the CEA's intentions to audit. The CEA could then select to perform the audit or not, based on risk.

2. Section 4.1.3.2 Period Covered (top of page 7)

Update evidence that the CEA can request states:

- For Reliability Standard Requirements specifying activities to be performed on a periodic basis of three calendar years or less: the lesser of (i) three years or (ii) the retention period described in the Reliability Standard.

The above bulleted item does not describe the amount of evidence that the CEA can request, as it does in the second bulleted item, below. Recommend that a qualifier be added such at the end to specifically state the amount of evidence required to be kept on hand. This qualifier should be the current evidence and the previous evidence.

- For Reliability Standard Requirements specifying activities to be performed on a periodic basis of greater than three calendar years: evidence showing that the required performance was made at the last required interval, with evidence of previous testing intervals.

No issues with the above bulleted item.

**COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER
ON PROPOSED REVISIONS TO NERC RULES OF PROCEDURE AND ASSOCIATED APPENDICES
POSTED NOVEMBER 2, 2020**

Dated: December 18, 2020

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments on the Proposed Revisions to the NERC Rules of Procedure (ROP) and associated Appendices posted for comment on November 2, 2020. LADWP also supports comments submitted by Large Public Power Council and American Public Power Association.

The City of Los Angeles is a municipal corporation and charter city organized under the provisions set forth in the California Constitution. LADWP is a department of the City of Los Angeles, pursuant to the Los Angeles City Charter, whose governing structure includes a mayor, a fifteen-member City Council, and a five-member Board of Water and Power Commissioners. LADWP is the third largest electric utility in the state, one of five California Balancing Authorities, and the nation's largest municipal utility, serving a population of over four million people within a 465 square mile service territory that covers the City of Los Angeles and portions of the Owens Valley. LADWP's mission is to provide its customers and the communities it serves safe, reliable, and cost-effective water and power in a customer-focused and environmentally responsible manner.

LADWP supports NERC's objective to revise ROP Section 400 and Appendix 4C (Compliance Monitoring and Enforcement Program (CMEP)) and requests NERC to i) further clarify some of the proposed changes, ii) retain some of the existing ROP processes, and iii) align the ROP with several current practices being followed.

1. CMEP Section 4.1 – Compliance Audits

NERC proposes to grant the Compliance Enforcement Authority (CEA) discretion as to when to conduct Compliance Audits and proposes to no longer require development and posting of the Annual Audit Plan.

LADWP needs adequate lead-time to plan for a Compliance Audit and coordinate internal staff availability, schedule audit resource allocation, conform systems development and integration decisions, accommodate operational constraints, and perform other advance activities and notifications to prepare for these audits including mock audits and/or self-audits to make sure resources are ready and documentation are organized to support an audit. The posting of the Annual Audit Plan is very useful in planning for such activities. Without the posting of the Annual Audit Plan and with just a 90-day notice, it is difficult for entities and especially large entities to plan for an audit and successfully execute all the foregoing ancillary activities that are critical for supporting Compliance Audits.

In addition, the processes listed above help identify gaps and potential non-compliance issues, and assist with self-reports, as necessary, including special considerations for the availability of subject matter experts and overall planning of audit logistics.

Therefore, in lieu of the annual posting of the schedule, LADWP recommends a 9 months advance notice of audit to Registered Entities in order to have a well-planned and effective audit and to provide some level of flexibility to the CEA.

Even though we are “audit ready” at all times, there is a difference between having relevant documents and evidence catalogued internally, and having those materials organized and annotated for submittal to the Regional Entity as part of the Compliance Audit process. Without the Annual Audit Plan and with just 90 days notice, proper planning and execution of the audit activities becomes more challenging.

2. CMEP Section 4.2.1 – Self-Certification Process

NERC proposes to eliminate the posting of the Self-Certification schedule and to provide a 30-day advance notice to Registered Entities of the requirement to complete a Self-Certification.

LADWP recommends retaining the current practice. The current practice provides entities almost 90 days to self-certify. With the proposed change, the timeline is reduced to one third and results in a very tight schedule. Such a change will have an adverse impact on large utilities such as LADWP based on their relatively high number of applicable standards, coordination with numerous subject matter experts, and collection and organization of large amounts of associated evidence and data.

For example, at LADWP, activities to achieve Self-Certification include evidence collection, RSAW review, peer review and management review and it is equivalent to activities practiced for a compliance audit. In addition, for Self-Certification, LADWP schedules adequate lead-time to have the necessary resource allocation, availability of subject matter experts, accommodation of operational constraints, and other critical activities to effectuate a successful Self-Certification. Therefore, unless the scope of Self-Certification requests is reduced in the future, LADWP recommends to retain the current practice.

3. CMEP Section 4.6.1 Periodic Data Submittals Process

NERC proposes to eliminate the step in which the CEA makes a request to Registered Entities for a Periodic Data Submittal.

LADWP recommends retaining the existing process. Request notifications from Regional Entities help to assure timely submittal of data to meet compliance. Without the request, it will be the responsibility of Registered Entities to schedule and track these submittals. If there are changes to the schedule or notice and a Registered Entity is not aware of that change, then the Registered Entity might be prone to not meet the due date or items prompted by the change.

The CEA's notice provides additional awareness of pending data submittals and helps to avoid missing due dates.

4. CMEP Section 4A.1 – Compliance Exception Process

LADWP supports the proposed changes to this section aimed at clarifying the treatment of Compliance Exceptions in a Registered Entity's compliance history. However, LADWP is seeking additional clarification.

When assessing a registered entity's "overall compliance history" in connection with the Compliance Exception Process, it is unclear how far back the CEA will look. Currently, it goes back to the effective date of the original standard. Some guidance would be helpful to reasonably shorten the period considered for compliance history based on the maturity of the Registered Entity's compliance program, recent successful implementation of mitigation measures, system upgrades, increased budget and resources, improved communication with Regional Entity, and greatly enhanced compliance culture. Assessing a Registered Entity's "overall compliance history" starting from the effective date of the standard is not reflective of the Registered Entity's current risk profile. As a result, LADWP recommends to limit how far back the CEA can go to check the compliance history.

This recommendation can be applied to other disposition processes such as Expedited Settlement Agreement process and Notice of Alleged Violation and Proposed Penalty or Sanction process.

5. Additional Comments

The Expedited Settlement Agreement process appears to be a commonly used disposition method for potential non-compliance processing. LADWP recommends the process to be formalized in the ROP in the form of including in the ROP or by providing more clarity and detailed guidance on the Expedited Settlement Agreement process.

NERC Rules of Procedure Idaho Power Company Comments

Appendix 4C

Implementation Plans

Idaho Power is supportive of the proposed change to the Rules of Procedure (ROP) requiring a single Compliance Monitoring and Enforcement Program (CMEP) Implementation Plan that includes ERO Enterprise-wide and Regional Entity-specific reliability risks, as this has worked well over the past two years it's been implemented. However, Idaho Power has concerns with the proposed change to the timing of the initial posting of the annual Implementation Plan from September 1 to "on or about November 1 of the calendar year preceding implementation." The September 1 posting date allows for Registered Entities to properly identify and budget for compliance efforts associated with internal monitoring by allowing sufficient time in the year for an entity to perform accurate risk assessments that may include the identified risk elements related to the NERC Reliability Standards and develop and communicate to business units the associated internal monitoring for the next year.

Compliance Audits

Idaho Power does not agree with the proposed change to eliminate the requirement for the CEAs to post their Annual Audit Plan. Though a Registered Entity's Compliance Oversight Plan (COP) may identify the frequency of an expected audit, not knowing at least which quarter in which the audit engagement may occur in a given year reduces the ability of the entity to sufficiently plan and prepare robust compliance packages for the audit. Since the CEAs are required to provide their annual audit plan to NERC, FERC, and other Applicable Governmental Authorities, no additional effort is required to post the annual audit plans for the registered entities to reference. In contrast, rather than reducing transparency into the CEA's audit plan, Idaho Power suggests that the CEAs return to the previous level of transparency in which the CEA's Annual Audit Plan is not only timely posted for the Registered Entities to reference, but provides the planned audit beginning and end dates for each entity included on the Annual Audit Plan.

Idaho Power is supportive of the proposed definition of the Compliance Audit period end date as the date of the audit notice. However, Idaho Power does not agree with NERC's suggestion to remove the tie between the previous Compliance Audit period end date and the beginning date of the next Compliance Audit period unless the end date is otherwise defined to include a maximum period (e.g., the start date may not be any earlier than the end date of the previous audit period).

National Rural Electric Cooperative Association (NRECA) Comments on Proposed Revisions to the NERC Rules of Procedure (ROP) Announced on November 4, 2020

NRECA appreciates the opportunity to provide comments on the proposed revisions to the NERC ROP that were announced on November 4, 2020. We agree with and support NERC's objectives in proposing these revisions. Because these revisions are integral to the continued maturity and consistent implementation of the compliance and enforcement processes, NRECA provides the following comments to facilitate the clarity of these revisions.

Appendix 2 – Definitions Used in the Rules of Procedure

- NRECA recommends that NERC do another complete review of the definitions in Appendix 2 to ensure that all defined terms are capitalized when used in the definition of another defined term.
 - One example is how “potential noncompliance” non-capitalized is used in the Self-Logging definition. Potential Noncompliance (PNC) is a defined term, but it is not capitalized when used elsewhere, e.g., defined terms Alleged Violation and Notice of Preliminary Screen. Also, “noncompliance” is used several times and we seek clarity on whether this should be adjusted to “Potential Noncompliance” given the newly defined term.
- Page 8 – With the added definitions of “Critical Electric Infrastructure” and “Critical Electric Infrastructure Information” NRECA seeks more information as to the rationale behind the addition of these two definitions, and their overall use and impact on registered entities and the NERC enterprise.
 - Will the information identified under these definitions primarily be used and treated as Confidential Information?
 - Are there other potential impacts to the industry on these new definitions?
 - More specifically, NRECA seeks to better understand why NERC is using lower case “bulk power system” in the proposed definition of Critical Electric Infrastructure? Is there a link between these two defined terms with the May 1, 2020, Executive Order on Bulk Power System Security? Will “Critical Electric Infrastructure” for NERC’s purposes also include 69kV facilities?
 - These new definitions will have acronyms (CEI and CEII) that are already in use for existing NERC defined terms which could create confusion when used across the NERC enterprise. NRECA asks that NERC determine how to mitigate this potential confusion.
- Page 17 – “Potential Noncompliance” is a defined term, but it is not capitalized when used elsewhere, e.g., Alleged Violation and Notice of Preliminary Screen defined terms. Also, plain “noncompliance” is used several times. Should this be adjusted to Potential Noncompliance given the newly defined term?

Appendix 4C – Compliance Monitoring and Enforcement Program

- Review Appendix 4C for use of “potential noncompliance” and “compliance” for consistency and whether they should instead be “Potential Noncompliance, or Alleged Violation” or something else. There should be consistency in usage here and throughout the ROP.
- Pages 4-6, Sections 4.1.1 and 4.1.2. -- As written, a registered entity could be made aware of an on-site audit for the first time with only a 90-day notification. This raises serious concerns and NRECA recommends requiring earlier notification of an audit. The addition of at least another

30 days for a 120-day notification seems appropriate. Additionally, some Regional Entities have indicated they are no longer providing the results of the IRA, but rather, incorporating those results in the COP. NRECA is concerned with the heavy reliance on the COP as it appears to be a generic and vague tool in many areas. We seek clarity on how the COP can be used in a more clear and meaningful manner for registered entities.

- Page 6, Section 4.1.3.2 -- The proposed changes appear to give the CEA the ability to extend or perhaps shorten an audit period. In the event that a beginning and end date is extended past the traditional audit period, this may require additional data to be compiled in order to prove compliance for the period. NRECA recommends that this section be revised to state that the CEA will extend the time a Registered Entity has from receiving its official Audit Letter. Additionally, it is unclear if this paragraph is referring to the actual audit dates or the monitoring period. NRECA recommends that NERC add clarity here.
- Page 9, Section 4.1.5 -- Proposed language has been added wherein a "Registered Entity has ten (10) business days to comment on the draft Compliance Audit report and to identify Confidential Information proposed for redaction." NRECA does not believe that ten (10) business days is enough time for a Registered Entity to review and comment. There can be instances where these reports would need to be reviewed by multiple departments within an organization (IT, Legal, etc.), and to only allow for ten (10) business days for them to review is overly burdensome. NRECA recommends a timeframe of thirty (30) days for such review and identification.
- Page 10 and 11, Section 4.2.1 -- As written, a registered entity could be made aware of a self-certification for the first time with only a 30-day notification. This raises serious concerns and NRECA suggests that NERC consider requiring earlier notification of a self-certification.
- Page 19, Section 4.8 – NRECA asks NERC to consider revising as follows due to the inclusion of self-reporting as a compliance monitoring process: The Preliminary Screen shall be conducted within ten (10) business days "after the potential noncompliance has been identified through one of the compliance monitoring processes."
- Page 19, Section 4.8 – NRECA suggests giving consideration to revising this addition in light of the discretion of CEAs to remove self-logged issues to other resolution mechanisms: All self-logged noncompliance "for which no further action is necessary," in accordance with Section 4.5A, shall be exempt from the Preliminary Screen.
- Page 27, Section 5.6 – NRECA believes clarity is needed around the following sentence to better address the importance of protecting Confidential Information: NERC will also publicly post information about 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 "where such information has not been deemed Confidential Information."
- Page 35, Section 6.2, bullet #9 -- The proposed language states: "The CEA may agree to a mutually acceptable timeline for completion of milestones, typically no more than three (3) months." It is unclear what date that the three (3) months starts from. Is it the date of the violation, or the date of submission of the Mitigation Plan? It appears that the language "from the date of submission" is being struck from this draft. NRECA recommends that NERC consider adding this language back in to help clarify or provide additional language that better describes the date that the three (3) months actually corresponds with.

Comments Submitted on December 18, 2020 by:

Barry Lawson

Senior Director, Regulatory Affairs

National Rural Electric Cooperative Association (NRECA)
703.907.5781
Barry.lawson@nreca.coop

Ed Kichline

From: Dickson, Douglas <Douglas.Dickson@pse.com>
Sent: Thursday, December 17, 2020 7:19 PM
To: ROPComments
Cc: Daugherty, Kaaren
Subject: Puget Sound Energy comments on proposed revisions to the NERC CMEP

Good Evening,

Puget Sound Energy (NRC# 05344) broadly supports the proposed revisions to the Compliance Monitoring and Enforcement Plan (CMEP).

The following specific comments are offered for consideration:

1. **Notice to Registered Entities of CEA Annual Audit Plan** – Given that, *“NERC proposes to grant the CEA discretion as to when to conduct Compliance Audits”* we are concerned that NERC’s proposal to, *“no longer to require the posting of an Annual Audit Plan . . . ”* does not provide Registered Entities sufficient notice of a planned audit.
 - a. We respectfully request that notification requirements currently stated in Appendix 4C Section 3.3 and 3.4 be retained for the following reasons:
 - i. The COP does not provide an entity notice of upcoming monitoring activity;
 - ii. COP is not updated on a frequent basis;
 - iii. The 90-day notice requirement is not sufficient time for an entity to plan and prepare for an audit; and
 - iv. The CEA has to prepare a schedule of planned audits anyway because NERC **does NOT propose to change**, *“the CEA’s obligation to provide schedules of planned audits and any changes to such planned audits to NERC, FERC, and other Applicable Governmental Authorities.”*
2. **Appendix 4C organization** - section 4.1.1 (proposed) **Compliance Audit Process** includes the CEA notification requirements to the Registered Entity. However, the heading of proposed section 4.1.2 was revised to include “and Notice” and also includes some notification information. We would appreciate having the notification information in a single section.
3. **Appendix 4C Section 4.1.5** (proposed) **Compliance Audit Reports**
 - a. NERC is proposing that Registered Entities respond to the draft Compliance Audit report with ten (10) business days of receipt, however there is no timeframe established for the CEA to provide said report to the Registered Entity. This leaves the Registered Entity with no time frame in which to expect the report. Please consider establishing a time frame within which the CEA must provide the Registered Entity a Compliance Audit Report following completion of an audit.
4. **Appendix 4C section 5.2** (proposed) **Notice of Preliminary Screen** - should this section heading be ‘Notice of Potential Violation’ versus ‘Notice of Preliminary Screen’? It describes what the CEA does after a Preliminary Screen and does not include a notice of such, but rather describes a notice of potential violation.
5. **Appendix 4C Section 6.1 Requirement for Submission of Mitigation** – while the change summary indicates, *“NERC proposes to require formal Mitigation Plans only at the request of the CEA. Otherwise, mitigating activities are the preferred method for remediating a potential noncompliance.”* The revisions in Appendix 4C Section 6.1 do not make it clear when or how the Registered Entity *“shall file with the CEA a description of how the noncompliance will be or has been mitigated.”* **Section 4.5** (proposed) **Self-Reports** requires that a Self-Report include, *“the actions that have been taken or will be taken to mitigate the noncompliance, including preventing recurrence.”* We respectfully request clarity around when, other than for a self-report, a Registered Entity shall file with the CEA a description of the mitigating activities if not through a requested Mitigation Plan.

6. **Appendix 4C Section 6.2 Contents of Mitigation Plans** – The proposal changes the current verbiage of: “A Mitigation Plan shall include . . . 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.” to the new verbiage of: “The CEA may agree to a mutually acceptable timeline for completion of milestones, typically no more than three (3) months.” Please clarify. The new verbiage does not grammatically follow the “A Mitigation Plan shall include . . .” and could be interpreted to mean the Mitigation Plan must be fully implemented within three months.
7. **Appendix 4C Section 6.3 (proposed) Submission of Mitigation Plans** – With the proposed revision that a Mitigation Plan is only required upon request of the CEA, the requirement that, “A Mitigation Plan shall have been submitted by the Registered Entity within thirty (30) days after being served the notification of Alleged Violation, . . .” seems to be add odds with Section 6.1 Requirement for Submission of Mitigation.

PSE has the following editing suggestions:

- Section 400
 - 401 – 5. Program Continuity 5.1 – 2., should be corrected as follows:
 - If an existing delegation agreement with a Regional Entity is ~~terminated~~ ~~terminating~~, the Regional Entity shall promptly provide to NERC all relevant compliance information regarding Registered Entities in the geographic footprint ~~or~~ for which the Regional Entity has CMEP responsibilities under coordinated oversight of 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 as specified in a termination agreement.
 - 401 – 6. Risk Elements, should be corrected as follows:
 - NERC, with input from the Regional Entities, stakeholders, and regulators, shall at least annually identify ERO and Regional Entity-specific risk elements, to prioritize risks to the reliability of the Bulk Power System. These risk elements, ~~with~~ together with related NERC Reliability Standards and Requirements are to be considered for compliance oversight in the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan to prioritize CMEP activities.
- Appendix 2
 - “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 ~~potential possible~~ noncompliance on a log, in accordance with Section 3.5A of Appendix 4C, in lieu of individually submitted Self-Reports of each possible potential noncompliance. Self-logged potential noncompliance is exempt from the Preliminary Screen and subsequent reporting and processing rules.

Regards,

Doug Dickson
NERC Compliance Program Manager
Puget Sound Energy
Desk: 425-462-3849
Mobile: 206-948-3561

via e-mail to ROPcomments@nerc.net

**COMMENTS OF TRANSMISSION ACCESS POLICY STUDY GROUP
ON POSTING OF PROPOSED CHANGES TO NERC RULES OF PROCEDURE
DATED NOVEMBER 2, 2020**

TAPS appreciates the opportunity to comment on NERC’s proposed changes to the Compliance Monitoring and Enforcement Program (“CMEP”) portions of the NERC Rules of Procedure (“ROP”), dated November 2, 2020.¹ Many of the proposed revisions will enhance efficiency and contribute to a risk-based approach to compliance and enforcement. As described below, however, TAPS is concerned that some changes, as proposed, could harm transparency and oversight, or unduly burden registered entities, particularly small entities such as TAPS members.

I. CONSISTENCY

A. Elimination of Regional Implementation Plans and Regional CMEPs

TAPS supports NERC’s proposal to eliminate separate Regional CMEPs and Regional CMEP Implementation Plans, and instead use the uniform CMEP and ERO Implementation Plan continent-wide. As the electric reliability organization (“ERO”) matures, it is appropriate to phase out unnecessary differences among Regional Entities. NERC should, however, clarify how regional risk variances will be accounted for in an ERO CMEP Implementation Plan.

B. Oversight of Regional Entity Implementation of ERO CMEP

While a single, uniform ERO CMEP is an important step towards achieving NERC’s goal of ensuring “consistency and fairness of the Regional Entity’s execution of the CMEP,”² it is not, on its own, sufficient; ongoing oversight is critical to ensuring that the CMEP is *implemented* consistently, including with respect to determinations of noncompliance and Penalty assessments. NERC’s intent with respect to oversight of Regional Entities is not clear: for example, the Summary of Proposed Changes³ suggests that a key component of NERC’s proposed “risk-based oversight” program is an audit of each Regional Entity to be conducted at least every five years, and states that “[w]ith inclusion of these provisions in Section 400, NERC proposes elimination of Appendix 4A and its procedure for NERC’s Audit of Regional Entity

¹ NERC Rules of Procedure, Sections 400 and 1500 (proposed Nov. 2, 2020), https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Redline_Sections_400_and_1500_CMEP.pdf (“Proposed Rules”), and NERC Rules of Procedure, Compliance Monitoring and Enforcement Program, Appendix 4C (proposed Nov. 2, 2020), https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Redline_Appendix_4C_CMEP.pdf (“Proposed Appendix 4C”).

² Proposed Rule 402.1.

³ NERC, Proposed Revisions to NERC Rules of Procedure for the Compliance Monitoring and Enforcement Program, <https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Summary%20of%20CMEP%20ROP%20Changes.pdf> (2020) (summary of CMEP ROP changes) (“Summary”).

Compliance Programs.” But the five-year audit requirement is already part of section 400,⁴ and NERC does not propose to revise it significantly; it is thus unclear how its “inclusion” in section 400 could justify the elimination of Appendix 4A. Nor do NERC’s other proposed changes to section 400 regarding its oversight of the Regional Entities add significant detail or substance. To allow stakeholders to comment meaningfully on its proposal, NERC should clarify how it plans to ensure that Regional Entities implement the uniform CMEP consistently, including with respect to determinations of noncompliance and assessments of Penalties.

II. COMPLIANCE ENGAGEMENTS

A. Audits

A. Audit frequency and format

NERC proposes to give Regional Entities discretion over when to conduct audits,⁵ as well as whether to have an on-site component to an audit.⁶ TAPS supports this proposal; increased flexibility will support the ERO’s risk-based compliance monitoring approach.

B. Audit schedule

TAPS is concerned that NERC’s proposal to eliminate the posting of an annual audit schedule⁷ will allow registered entities too little time to prepare for audits. NERC states in the Summary that registered entities will have adequate information about timing thanks to (a) “indications” of frequency in the entity’s Compliance Oversight Plan (“COP”) and (b) the ninety-day audit notice.⁸ But the COP, as currently implemented, does not provide meaningful notice: for example, some TAPS members have received their COPs at the same time as their audit notifications.

And the ninety-day audit notice is insufficient, without an additional advance notice such as is currently provided by the annual audit schedule. The ninety-day notice starts the clock on providing specific evidence to the Compliance Enforcement Authority (“CEA”); it is not adequate notice of the existence and general scope of an audit. In fact, because the deadline to submit evidence is well before the audit start date, NERC’s proposal would effectively provide significantly *less* than ninety days. Regional Entities vary in terms of when they require evidence—some give registered entities sixty days to respond following the audit notification, but others allow only thirty days. While TAPS members strive to be audit-ready at all times, the process of converting internal records into an organized package responsive to the Regional Entity’s questions is time- and labor-intensive. Allowing registered entities adequate time to

⁴ Current Rule 402.1.3.

⁵ Proposed Rule 403.10; Summary at 2.

⁶ Proposed Rule 403.10; App. 4C, proposed § 4.1; Summary at 2.

⁷ NERC, *Rules of Procedure* (effective Jan. 25, 2019), Compliance Enforcement Authority Annual Audit Plan and Schedule, Appendix 4C to the Rules of Procedure, Effective: June 8, 2018, § 3.1.2, https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/NERC_ROP_Effective_20190125.pdf (“App. 4C, current”) (proposed for deletion).

⁸ Summary at 2.

compile their submittals, and adequate advance warning to ensure that the appropriate personnel are available to do so, benefits the CEA as well as the registered entity, since doing so results in a better-organized submittal.

Registered Entities, especially small entities with limited compliance staff, need advance warning so that they can ensure that key personnel are available to handle compliance engagements. TAPS agrees with the American Public Power Association and the Large Public Power Council that at least nine months' notice is needed before the start of a Compliance Audit.

Neither the current ROP nor the proposed revisions address either the COP or the Required Date for audit evidence submission. If the audit schedule is to be eliminated, NERC must clarify in the ROP both the timing and content of the COP, as well as the Required Date for submission of evidence following an audit notification. An accurate COP, including the customized monitoring scope and schedule, delivered to all entities on a set schedule, and at least nine months in advance of an audit, would likely provide adequate notice. Absent these or other comparable changes to the proposal, TAPS opposes the elimination of the posting of an annual audit schedule.

C. Audit Period and Scope

NERC proposes to delete the current, overly burdensome requirement that a registered entity be able to demonstrate compliance for the entire audit period, instead proposing revisions⁹ that seem, with one exception, to be consistent with the SER Phase 2 recommendations¹⁰ regarding evidence retention reform. TAPS generally supports the proposal, but additional clarity is needed with respect to the “evidence of previous testing intervals” that can be requested for activities performed on a periodic basis of more than three years. The proposed text could be read as allowing an auditor to request evidence for *all* prior testing intervals—a clearly excessive result. The ability to request evidence of prior testing intervals should be limited to the standard’s evidence retention period. Further granularity could be provided by a registered entity’s COP; if a registered entity has a good record with respect to a requirement, the CEA could permit it to retain evidence of just the most recent interval, even if the standard’s evidence retention period would cover more intervals.

NERC also proposes to change the language regarding beginning and end dates of the audit period. The proposed changes would give the Regional Entity more discretion with respect to the beginning date of the audit period, stating only that “[t]he beginning date of the audit period for any given Reliability Standard Requirement may account for factors such as an intervening

⁹ App. 4C, proposed § 4.1.3.2.

¹⁰ *Standard Efficiency Review (SER) Phase 2 Evidence Retention Team’s Recommended Evidence Retention Schemes, Evidence and Data Retention White Paper: Analysis and Recommendations* (2019), https://www.nerc.com/pa/Stand/Standards%20Efficiency%20Review%20DL/SER_Evidence_Retention_White_Paper_02062020.pdf; NERC Standards Comm., Agenda Item 9, *SER Evidence Retention Recommendations* (2019), https://www.nerc.com/pa/Stand/Standards%20Efficiency%20Review%20DL/SER_Evidence_Retention_Recommendations_02062020.pdf (endorsed by Standards Committee Dec. 18, 2019).

compliance monitoring process.”¹¹ TAPS supports this proposed increased flexibility, which is consistent with a risk-based compliance monitoring approach.

TAPS requests, however, that NERC clarify the impact of the beginning and end dates of the audit period, particularly in the context of the proposed limitations on what evidence an auditor can request. For example, if a requirement specifying an activity to be performed on a periodic basis of less than three years has a stated evidence retention period of three years, and the beginning date of the audit period with respect to that requirement is five years before the audit period end date, the proposed text suggests that the auditor could only request evidence for the past three years—an approach that TAPS supports.

If, on the other hand, the beginning date of the audit period for the hypothetical requirement just described were just *two* years prior to the audit period end date, would an auditor be limited to requesting data for only the two years covered by the audit period? Or would the auditor be permitted to request data from before the start date of the audit period, for a total of three years? If the latter interpretation is correct, what purpose is served by the audit period beginning and ending dates? Do they merely indicate the time period on which auditors will focus their attention? NERC should explain its intent and clarify the proposed text.

B. Self-Certifications

NERC’s proposal to eliminate the posting of a Self-Certification schedule,¹² instead “initiat[ing] Self-Certifications as needed based on emerging identified risks,”¹³ raises the same concerns as the proposed elimination of the annual audit schedule. NERC proposes that the CEA would provide the registered entity with at least thirty days’ notice of a Self-Certification.¹⁴ But from the registered entity perspective, a Self-Certification involves essentially the same compliance-confirming activity as an audit. Registered entities—particularly small entities—thus need more than thirty days to respond. As suggested above with respect to audits, regularly issued, accurate COPs could take the place of the Self-Certification schedule as the vehicle for providing registered entities with the necessary advance notice. But as currently proposed, the elimination of the Self-Certification schedule would leave registered entities with insufficient time to prepare and submit Self-Certifications; plainly, that is not acceptable. TAPS thus opposes the change.

III. NONCOMPLIANCE

A. Compliance Exceptions

A. NERC/FERC Review

With respect to NERC’s proposal to “refine the Compliance Exception Program by removing the requirement for the CEA to submit Compliance Exceptions to NERC for a 60-day review by NERC and FERC,”¹⁵ TAPS notes that it is crucial that NERC continue to post Compliance

¹¹ *Id.*

¹² App. 4C, proposed § 4.2.1.

¹³ Summary at 3.

¹⁴ App. 4C, proposed § 4.2.1.

¹⁵ Summary at 3.

Exception information on its website, as required by FERC.¹⁶ As FERC has recognized,¹⁷ Compliance Exception information is valuable to stakeholders as a learning tool to help them improve their own programs, as well as helping to ensure that similar noncompliance is treated consistently. NERC, appropriately, does not appear to contemplate any alteration to that obligation.¹⁸

B. Compliance History

NERC states that some of its proposed changes are intended to “clarify” the treatment of Compliance Exceptions in a registered entity’s compliance history.¹⁹ Currently, the CMEP states that although “Compliance Exceptions are not included in a Registered Entity’s compliance history for penalty purposes,”²⁰ the CEA must “assess subsequent noncompliance to determine whether a Registered Entity should continue to qualify for Compliance Exception treatment.”²¹

NERC proposes to refer to “overall compliance history,” in place of the current “subsequent noncompliance.”²² NERC explains that “[t]he revision would simplify the CEA’s consideration of compliance history by looking at the registered entity’s overall compliance history to determine whether the registered entity should continue to qualify for Compliance Exception treatment—instead of having to consider each prior Compliance Exception individually.”²³

The context of this language is important: in the RAI proceeding at FERC, NERC proposed that Compliance Exceptions not be considered part of a registered entity’s compliance history for penalty purposes.²⁴ FERC accepted that proposal, with one addendum relevant here: it required that Regional Entities “assess[] any subsequent noncompliance of the same or closely-related Standards and Requirements to determine whether the registered entity should continue to qualify for compliance exception treatment regarding the subject of the repeat noncompliance.”²⁵

While the current ROP’s choice of words does not clearly convey FERC’s directive, NERC’s proposal to instead look at a registered entity’s *overall* compliance history, rather than its compliance history with respect to the same or closely related requirements, would represent a substantive change, not a “clarification[.]” A more useful clarification would use FERC’s

¹⁶ *N. Am. Elec. Reliability Corp.*, 161 FERC ¶ 61,187, PP 28, 31-32 (2017) (“2017 Order”); *N. Am. Elec. Reliability Corp.*, 150 FERC ¶ 61,108, P 36 (2015) (“RAI Order”).

¹⁷ *See, e.g.* note 35 below.

¹⁸ Proposed Rule 401.11.

¹⁹ Summary at 3.

²⁰ App. 4C, current § 3A.1.

²¹ *Id.*

²² App. 4C, proposed § 4A.1.

²³ Summary at 3.

²⁴ RAI Order P 44; Informational Filing of the North American Electric Reliability Corporation at 44, 62 n.54, *N. Am. Elec. Reliability Corp.*, No. RR15-2-000 (Nov. 3, 2014), eLibrary No. 20141103-5199 (“RAI Petition”).

²⁵ RAI Order P 45.

language to avoid any confusion. Based on the experience of TAPS members, NERC should also (a) provide additional guidance to Regional Entity staff with respect to the relative weight to be given to recent versus several-years-old “repeat noncompliance”; and (b) clarify that under most circumstances, regular self-reporting of minimal risk issues is more likely to be indicative of strong internal controls that catch and fix issues before the risk increases, than of a flawed compliance program.

B. Self-Logging

In place of the current rebuttable presumption that self-logged items will be resolved as Compliance Exceptions,²⁶ NERC proposes to exempt all self-logged noncompliance from the Preliminary Screen²⁷ and “subsequent reporting and disposition processes,”²⁸ and provide that “[a] potential noncompliance logged in this manner [would be] reviewed by the CEA and [would] not require further action.”²⁹ Consistent with the current requirement, self-logs would be available for review by NERC or FERC upon request.³⁰

The current options for “enforcement discretion” are the Compliance Exception and Find, Fix, Track and Report (“FFT”) tracks;³¹ every noncompliance has to go through some process. NERC does not propose to change that approach with respect to noncompliance discovered through any means other than self-logging.³² However, NERC proposes to add a third option for enforcement discretion: self-logged potential noncompliance that is not acted on. Under NERC’s proposal, self-logs would be unique in allowing actual noncompliance (i.e., potential noncompliance that would not have been dismissed based on a Preliminary Screen or Assessment of Potential Noncompliance, if subjected to that process) to be passed over without even a Compliance Exception.³³

While TAPS supports streamlining compliance and enforcement, such efficiencies must not come at the expense of the “transparency in the outcome of compliance and enforcement matters relating to noncompliance with Reliability Standards” that FERC has consistently required.³⁴ NERC does not propose to post any information about self-logged noncompliance on which the Regional Entity takes no action, thus depriving industry of learning opportunities, as well as of the ability to assess whether similar instances of noncompliance are being treated consistently

²⁶ App. 4C, current § 3.5A.

²⁷ App. 4C, proposed § 4.5A.

²⁸ Summary at 3.

²⁹ App. 4C, proposed § 4.5A.

³⁰ Summary at 3.

³¹ App. 4C, current § 3A.0.

³² App. 4C, proposed § 4A.0.

³³ While it would be impossible, absent the Preliminary Screen and Assessment of Potential Noncompliance, to tell whether any *particular* self-logged potential noncompliance was an actual noncompliance, NERC’s proposal to pass over potential noncompliance without performing the initial screens ensures that *some* actual noncompliance will be disregarded.

³⁴ 2017 Order P 32; *see also* RAI Order P 38.

across Regions, and from one registered entity to another.³⁵ The risk of inconsistency is compounded by the fact that NERC proposes to provide no guidance to Regional Entities on which self-logged noncompliance would warrant further action. In the absence of such guidance, consistent implementation would be all but impossible.³⁶

Two further problems are introduced by NERC's apparent intention not to keep track of un-acted-on self-logged noncompliance. First, compliance data is an important tool for NERC's and stakeholders' efforts to identify redundant and unnecessary requirements; absent a transparent record of what self-logged potential noncompliance is passed over by Regional Entities, NERC and stakeholders will be less equipped to identify redundant and unnecessary requirements that should be eliminated. If a significant proportion of noncompliance is so low-risk that it does not merit even a Compliance Exception, that is a strong indication that further efforts to right-size the body of standards are needed; the problem of unnecessary requirements cannot be solved in the CMEP.

And NERC's proposal to stop tracking some noncompliance for self-logs, but *not* for noncompliance discovered via other methods, has a discriminatory result: a small registered entity with few instances of noncompliance, for whom the burden of joining the self-logging program is unwarranted, would continue to have every minimal risk self-report treated as at least a Compliance Exception, which would count against that entity's ability to receive Compliance Exception treatment for future noncompliance. But a large registered entity with a significant number of *self-logged* items could nevertheless potentially keep an entirely clean record, with no impact on its ability to continue self-logging, or to receive Compliance Exception treatment for any noncompliance that *is* acted on.

If it proceeds with this proposal, NERC must make significant changes to address the serious concerns raised herein. First, it must clarify that, consistent with FERC's prior orders on this issue,³⁷ where a self-logged noncompliance is resolved as a Compliance Exception, FFT, or Notice of Penalty ("NOP"), the fact of having originated in a self-log does not exempt the noncompliance from the normal information-posting requirements.³⁸ And, also consistent with

³⁵ In rejecting a proposal to eliminate the public posting of Compliance Exceptions associated with self-logged noncompliance, FERC reiterated that

transparency in compliance and enforcement matters is beneficial to educate industry and provide additional oversight of the ERO Enterprise. It also serves to allow interested registered entities and other parties to measure consistency across entities, classes of entities, or Regional Entities, as well as demonstrating the quality of registered entities' internal controls programs, particularly an entity's ability to swiftly and effectively identify, assess, and correct possible instances of noncompliance.

2017 Order P 28. *See also id.*, PP 31, 32.

³⁶ *Cf.* App. 4C, current §§ 3A.1 and 5.2A (setting out criteria for Compliance Exception and FFT treatment, respectively).

³⁷ RAI Order PP 36-39; 2017 Order PP 28, 31-32; *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193, P 68 ("FFT Order"), *on reh'g*, 139 FERC ¶ 61,168 (2012).

³⁸ Rule 401.11; App. 4C, proposed § 8.2. TAPS believes that NERC's exemption of self-logs from the "reporting requirements of Section 8.0," App. 4C, proposed § 4.5A, is not intended to encompass that section's obligation to

the thrust of those orders, information would need to be posted on any self-logged potential noncompliance that is not acted on,³⁹ analogous to the information that is currently posted for Compliance Exceptions. FERC's orders certainly do not contemplate or authorize creating an exception to the public-posting requirement for self-logged noncompliances that are not acted on in any way.

Finally, to avoid unjustified discrimination against small registered entities, either NERC must significantly reduce the administrative burden of joining and participating in the self-logging program, so that it is equally accessible to, and reasonable and cost-effective for, all registered entities (no matter how small the entity and how infrequent their noncompliance), or NERC must extend the no-further-action option to all self-reports of minimal risk noncompliance.⁴⁰ Failure to do so flies in the face of the statutory and regulatory requirements that NERC's Rules of Procedure be "not unduly discriminatory or preferential"⁴¹ and "provide fair and impartial procedures for enforcement of reliability standards."⁴²

C. Public Posting of Compliance Information

A. Noncompliance

NERC's proposed revisions to Rule 401.11 do not affect the obligation to post (non- Critical-Infrastructure-Protection ("CIP")) NOPs.⁴³ TAPS interprets the proposal to require posting "information on" confirmed potential noncompliance, rather than posting "Confirmed Violations," as a housekeeping matter: what NERC currently posts regarding FFTs and Compliance Exceptions *is* "information on" the noncompliance. TAPS would, however, oppose any proposal to reduce the information posted regarding Compliance Exceptions and FFTs.

B. Mitigation Plans

NERC proposes changes to the public availability of Mitigation Plans, when they are still used. In the context of a settlement, NERC seems to contemplate that the Plan itself would still be posted: "[The public] posting [regarding an approved settlement] shall include a copy of the

post NOPs; we would strenuously object to any proposal to make NOPs non-public based solely on the method of discovery of the noncompliance.

³⁹ If self-logged noncompliance does not go through a Preliminary Screen and Assessment of Potential Noncompliance, it is possible that some instances of potential noncompliance that would have been dismissed based on one of those assessments will be posted. NERC could avoid the posting of "dismissible" potential noncompliance by requiring a Preliminary Screen and Assessment of Potential Noncompliance before a Regional Entity decides not to act on a potential noncompliance. Alternatively, a registered entity that is uncertain about the status of a particular self-logged item could request Regional Entity review on a case-by-case basis. In any event, it would be unreasonable, and contrary to the spirit of FERC's prior orders, for the ERO to decline to determine the status of self-logged potential noncompliance, and then refuse to post information on any such noncompliance based on its self-imposed lack of knowledge.

⁴⁰ In the latter case, as with self-logs, information on un-acted-on self-reports would need to be posted.

⁴¹ 16 U.S.C. § 824o(f); 18 C.F.R. § 39.10(c).

⁴² 16 U.S.C. 824o(c)(2)(C); 18 C.F.R. § 39.3(b)(2)(iii).

⁴³ App. 4C, proposed § 8.2.

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* or a description of the Mitigating Activities.”⁴⁴

In cases where there is no settlement, however, NERC proposes to eliminate section 6.5’s requirement to post associated Mitigation Plans.⁴⁵ NERC states in the Summary that it is unnecessary to post Mitigation Plans for related NOPs because “dispositions of noncompliance include descriptions of the mitigating activities.”⁴⁶ But there is an inconsistency: the “information on” noncompliance that Rule 401.11 requires NERC to post includes “any Mitigation Plan or other Mitigating Activities.”⁴⁷ That seems to require NERC to continue to post Mitigation Plans. Because Mitigation Plans provide registered entities valuable information that they can use to enhance their compliance with Reliability Standards and thereby enhance reliability, TAPS requests that NERC resolve the inconsistency in favor of continued posting of Mitigation Plans (subject, as always, to confidentiality/Critical Energy Infrastructure Information restrictions); where such a plan exists, there is no discernible reason for depriving other registered entities of the benefit of seeing the plan itself, rather than a description.

C. Audit Guides

Finally, NERC proposes to delete the current statement that “audit guides will be posted on NERC’s website.”⁴⁸ The term “audit guides” is not defined in the Rules of Procedure; it is thus unclear what information, if any, NERC is proposing to stop posting. TAPS understands that NERC, appropriately, does not intend to reduce the compliance-related information available on its website, such as Reliability Standard Audit Worksheets and Compliance Guidance. NERC should clarify that intention, and improve transparency, by stating in the Rules of Procedure which compliance guides are posted publicly.

IV. DEADLINES

NERC’s proposed elimination of the reference to on-site audit work currently included in section 3.1.5.4, “Registered Entity Objections to Compliance Audit Team,” makes sense given that not all audits have an on-site component. But other proposed changes to the timing of objections to members of a Compliance Audit team result in significantly stricter deadlines for registered entities, and seem to contain a serious flaw.

The proposed text⁴⁹ would read:

Any such objections must be provided in writing to the
[Compliance Enforcement Authority (“CEA”)] no later than thirty
(30) days after the notification of the Compliance Audit. This

⁴⁴ App. 4C, proposed § 5.6 (emphasis added).

⁴⁵ App. 4C, proposed § 6.4.

⁴⁶ Summary at 4.

⁴⁷ Proposed Rule 401.11.2.

⁴⁸ App. 4C, proposed § 4.1.

⁴⁹ App. 4C, proposed § 4.1.4.4.

thirty- (30) day requirement shall not apply where a Compliance Audit team member has been appointed less than thirty-five (35) days prior to the start of Compliance Audit work, in which case the Registered Entity must provide any objections to the CEA within five (5) business days after receiving notice of the appointment of the Compliance Audit team member.

Given 90 days between the audit notification and the start of audit work,⁵⁰ the proposed new deadline of 30 days after the audit notification would be 60 days before the start of audit work—more than six weeks earlier than the current deadline of 15 days before the start of the audit. This proposal is untenable: first, if an audit team member is appointed between 26 and 30 days after the audit notification letter, the registered entity will have even less time to respond than the 5 days allowed for *last-minute* additions to the audit team—an unjustifiable result two months before the start of audit work. And if an audit team member is appointed between 31 and 55 days after the audit notification letter (i.e. 59 to 35 days before the start of audit work), there seems to be *no* applicable deadline.

Other than deleting the words “on-site,” NERC should not adopt the proposed changes. If it nevertheless does so, it must revise the numbers to result in deadlines comparable to those currently in effect (which will require tying the primary deadline to either the start of audit work, or the date the registered entity is notified of the team member’s appointment, rather than to the date of the audit notification letter), and to avoid the current proposal’s twenty-four-day no man’s land.

V. MITIGATION

TAPS supports NERC’s proposals to move from requiring formal Mitigation Plans to more reliance on less-formal Mitigating Activities,⁵¹ and to give the Regional Entities more discretion regarding the timing of Mitigating Activity milestones and progress reports.⁵² Risk-based compliance monitoring requires more flexibility with respect to mitigation than the rules currently provide.

TAPS also supports the proposal by the American Public Power Association and the Large Public Power Council to add text to section 6.4 stating that if the CEA does not act on a revised Mitigation Plan within the applicable time limit, the revised Mitigation Plan will be deemed accepted. The proposed language is analogous to the existing approach with respect to *original* Mitigation Plans,⁵³ and should be adopted. There is no reason to have different rules regarding CEA non-action on revised versus original Mitigation Plans; a consistent approach will enhance the clarity of the process.

⁵⁰ App. 4C, current § 3.1.1.1, proposed § 4.1.1.

⁵¹ Proposed Rule 403.10.5; Summary at 4.

⁵² App. 4C, proposed §§ 6.2, 6.6.

⁵³ App. 4C, proposed § 6.5.

VI. REGIONAL ENTITIES

TAPS supports NERC’s proposal to eliminate ROP language regarding Regional Entity compliance with Reliability Standards, since no Reliability Standards are now applicable to Regional Entities. NERC should use this opportunity to remove Segment 10 from the Registered Ballot Body, as well. While the ERO has an important role in standards development—for example, TAPS believes that the input of Compliance Staff would be very valuable to drafting teams—it is inappropriate for the Regional Entities to vote on standards; they are no longer stakeholders in the same sense as any of the other segments.

VII. CONCLUSION

TAPS looks forward to continuing to work with NERC in the new year to make the CMEP more risk-based and streamlined, while ensuring that NERC continues to meet its important obligations to ensure transparency and impartial and nondiscriminatory enforcement.

Consideration of Comments

Rules of Procedure (ROP) Changes to Sections 400 and 1500, and Appendices 2 and 4C for the Compliance Monitoring and Enforcement Program; Changes to Section 600 for the Personnel Certification Program and Section 900 for the Training and Education Program

NERC thanks all commenters who submitted comments on the proposed changes to the Rules of Procedure. NERC posted the proposed changes for public comment from November 4, 2020 through December 18, 2020. NERC received 11 sets of comments, as shown in the table on the following pages.

NERC has posted submitted comments on the [Rules of Procedure page](#).

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List of Commenters

| Organization | |
|--------------|--|
| 1 | National Rural Electric Cooperative Association (NRECA) |
| 2 | Edison Electric Institute (EEI) |
| 3 | Transmission Access Policy Study Group (TAPS) |
| 4 | MidAmerican Energy Company (supported EEI comments) |
| 5 | Los Angeles Department of Water and Power (LADWP) |
| 6 | American Public Power Association (APPA) and Large Public Power Council (LPPC) (collectively, APPA/LPPC) |
| 7 | Idaho Power (IPCO) |
| 8 | Midwest Reliability Organization NERC Standards Review Forum (MRO NSRF) |
| 9 | California ISO (CAISO) |
| 10 | Puget Sound Energy (PSE) |
| 11 | Public Utility District No. 1 of Chelan County (Chelan PUD)(also supported LPPC comments) |

Comments

1. NERC Rules of Procedure Section 400 – *Compliance Monitoring and Enforcement Program*

NERC proposes several revisions to update the ROP to reflect more accurately current business practices.

Section 401 – Scope of the Compliance Monitoring and Enforcement Program

- NERC proposes to state that there is only one Compliance Monitoring and Enforcement Program and that Regional Entities are responsible for executing the CMEP. NERC proposes to eliminate the concept of each Regional Entity having its own CMEP. Also, as in Appendix 4C (described below), NERC proposes to eliminate references to Regional Entity CMEP Implementation Plans.
- NERC proposes to state explicitly that rules regarding the public posting of noncompliance information remain subject to the disclosure regulations and requirements of the Applicable Governmental Authority.

| Topic | Summary of Stakeholder Comments | Action/Response and Notes |
|-----------------------|---|---|
| Program Continuity | PSE suggests revising language to refer to a terminated delegation agreement instead of one that is in the process of terminating. PSE also suggests removing “or” when addressing compliance information for registered entities within a Regional Entity’s geographic or for which the Regional Entity has CMEP responsibilities under the coordinated oversight program. | The first provision is for activities to take place <i>before</i> the delegation agreement is terminated, so NERC will not incorporate the suggested revision. The second provision covers the two types of registered entities for which a Regional Entity could have compliance information, so NERC will not incorporate the suggested revision. |
| Applicability of CMEP | EEL disagrees with the removal of Regional Entities and NERC from the list of entities in Section 401.2 required to comply with Reliability Standards. EEL argues that the ROP are more broadly applicable than the Reliability Standards and include obligations for NERC and the Regional Entities. | Section 401.2 only addresses compliance with Reliability Standards, none of which are applicable to NERC or the Regional Entities. There are other provisions of the ROP that ensure NERC’s and the Regional Entities’ adherence to the ROP. |
| Data Retention | EEL recommends maintaining the phrase indicating that NERC and the CEA will define data retention and | NERC proposes removal of the language to afford flexibility in defining data retention periods without the need to revise Reliability Standards. The Reliability |

| Topic | Summary of Stakeholder Comments | Action/Response and Notes |
|---------------------------------|--|---|
| | reporting requirements “in the Reliability Standards and compliance reporting procedures.” | Standards represent the maximum data retention expectations. Allowing the use of tools outside of Reliability Standards to refine data retention periods creates the opportunity to reduce data retention obligations when appropriate. |
| Confidential Information | EEI advises against deletion of language stating that information that would jeopardize reliability will be identified and protected from public disclosure in accordance with Section 1500. EEI also suggests retaining language stating that NERC will redact Critical Energy Infrastructure Information and any other Confidential Information in accordance with Section 1500. | NERC proposes removal of this language because it is duplicative of the Section 1500 Confidential Information protections. NERC intends to simplify the ROP by stating that Section 1500 governs the treatment of Confidential Information, including CMEP Confidential Information. |
| Public Posting of Noncompliance | EEI questions whether NERC intends to post only information about noncompliance and not the noncompliance, itself. | The revised language does not represent a change in the information that NERC would post for resolved noncompliance, principally: 1) a description of the noncompliance; 2) a risk assessment of the noncompliance; and 3) the mitigating activities to remediate the noncompliance and prevent recurrence. |

Section 402 – NERC Oversight of the Compliance Monitoring and Enforcement Program

- NERC proposes to describe its risk-based oversight of the Regional Entities’ execution of the CMEP. This oversight includes an audit to be conducted at least once every five years to evaluate implementation of the CMEP by each Regional Entity.
- NERC proposes to eliminate the requirement to document in the Regional Delegation Agreement any differences in execution of the CMEP or application of the NERC Sanction Guidelines to assess penalties. Any such differences would still be justified and described on a case-by-case basis.
- NERC proposes to indicate that the CEA, which may be NERC or a Regional Entity, is responsible for monitoring compliance and determining penalties and sanctions for noncompliance with Reliability Standards. NERC proposes this change to simplify references to the CEA as opposed to NERC or a Regional Entity.

- NERC proposes to remove provisions regarding monitoring Regional Entity compliance with Reliability Standards, as there are no Reliability Standards applicable to the Regional Entities or to NERC.
- NERC proposes to expand the rule regarding disclosure of potential conflicts with market rules to include any Reliability Standard, as opposed to only a Regional Reliability Standard.
- NERC proposes that the requirements for Regional Entity execution of the CMEP apply to anyone at a Regional Entity who may be involved in CMEP activities, instead of applying only to Regional Entity Compliance staff.
- NERC proposes to reduce redundancy with Appendix 4C by: 1) indicating that each Regional Entity will implement risk-based compliance monitoring in accordance with Appendix 4C; and 2) removing references to schedules, reports, and noncompliance dispositions published by NERC and the Regional Entities.

| Topic | Summary of Stakeholder Comments | Action/Response and Notes |
|--|--|---|
| NERC Oversight of Regional Entities' execution of the CMEP | APPA and LPPC request additional clarity on the metrics that are part of NERC's oversight of the CMEP. | NERC includes several metrics in its quarterly and annual CMEP reports, including violation aging and mitigation completion. NERC shares with the Regional Entities its annual oversight plan for CMEP activities. As stated in Section 402.1, NERC also uses criteria developed by the Compliance and Certification Committee (CCC) to evaluate the effectiveness of the Regional Entities in implementing the CMEP. The CCC criteria are available through the CCC's page on NERC's website in CCCPP-010. |
| Confidentiality | EEI suggests revising Section 402.8.1 to clarify that codes of conduct and confidentiality rules apply to all parties participating in CMEP activities. EEI also observes that proposed Section 402.8.2 does not describe the actions that could lead to losing access to Confidential Information. | NERC will clarify the language to indicate that the Confidential Information rules apply to all participants in CMEP activities. NERC will clarify the language to indicate that failure to follow the confidentiality provisions of the ROP or the CEA may cause the loss of access to Confidential Information. |
| Confidential Information | EEI suggests not deleting current Section 402.8.3 stating that Critical Energy Infrastructure Information | As noted above, to the extent feasible, NERC proposes to consolidate all of the ROP's Confidential |

| Topic | Summary of Stakeholder Comments | Action/Response and Notes |
|-------|---|--|
| | will not be shared outside of a committee or team or released publicly. | Information provisions into Section 1500 to avoid having duplicative or inadvertently conflicting language in other sections of the ROP. |

Section 403 – Required Attributes of Regional Entity Implementation of the Compliance Monitoring and Enforcement Program

| Topic | Summary of Stakeholder Comments | Action/Response and Notes |
|---|---|---|
| Regional Entity Staff | EEI suggests revising Section 403.6 to clarify that not all Regional Entity Staff shall be capable of implementing the CMEP. | NERC will clarify the language to indicate that the expectations for Regional Entity Staff independence apply to the Staff collectively, not to every individual employed by the Regional Entity. |
| Confidentiality requirements for independent technical subject matter experts | EEI recommends defining in Section 403.6.3 the confidentiality expectations of independent subject matter experts. | NERC considers independent subject matter experts to be part of Regional Entity Staff for these purposes, making them subject to the confidentiality obligations of Section 403.6.4. |
| Officer certification of Self-Reports | EEI questions the change from officer certification of “compliance data Self-Reported to the Regional Entity” to “Self-Reports to the Regional Entity, including Documents, data, and information provided with the Self-Report.” | The revised language does not represent a change in the expectations for registered entity submissions in Self-Reports. NERC and the CEA understand that such certifications are to the individual’s best knowledge at the time of the certification, recognizing that information may change with further examination by the registered entity or the CEA. |

Section 406 – Independent Audits of the Compliance Monitoring and Enforcement Program

| Topic | Summary of Stakeholder Comments | Action/Response and Notes |
|---|---|--|
| Final reports of independent audits of the CMEP | EEI recommends retaining language requiring the public posting of final reports from independent audits of the CMEP to preserve transparency. | NERC will maintain the proposed language, stating that the final report/response/action plan will be provided to the NERC Board of Trustees or other |

| Topic | Summary of Stakeholder Comments | Action/Response and Notes |
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| | EEl also suggests posting the NERC response and plan to address the final report. | appropriate Board committee, and add language to indicate that NERC will post the report/response/action plan for public viewing when authorized by the NERC Board of Trustees or other appropriate Board committee. |

Section 408 – Review of NERC Decisions

| Topic | Summary of Stakeholder Comments | Action/Response and Notes |
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| Scope of review of NERC decisions | EEl states that Section 408.1 should allow a registered entity to challenge a finding of noncompliance from CMEP activities other than audits. | Section 408.1 does allow a registered entity to challenge any finding of noncompliance by NERC as the CEA. EEl inadvertently read together the appeal rights of a registered entity related to noncompliance and the appeal rights of Regional Entities related to audits of the Regional Entity's implementation of the CMEP. |

2. NERC Rules of Procedure Section 1500 – *Confidential Information*

NERC proposes to revise the definitions of Confidential Information to reflect the terms used by FERC in its regulations on the protection of Critical Electric Infrastructure Information and Critical Energy Infrastructure Information.

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| “Critical Electric Infrastructure” and “Critical Electric Infrastructure Information” | NRECA questions the import of adding these terms to the definition of “Confidential Information.” | NERC is not altering the definitions used by FERC, nor changing the definition of the bulk power system. NERC will not use acronyms subject to multiple interpretations in order to make clear the references to Critical Electric Infrastructure Information or Critical Energy Infrastructure Information. |

3. NERC Rules of Procedure Appendix 4C – *Compliance Monitoring and Enforcement Program* Registration Requirements

- NERC proposes to remove the registration-related provisions in Appendix 4C, as they are redundant with the requirements included in Section 500 and Appendix 5B. Appendix 4C begins with the presumption that organizations responsible for complying with Reliability Standards are Registered Entities.

Maintenance of Public Access to Reliability Standards

- NERC proposes to remove from the CMEP language stating that NERC will maintain on its website the Reliability Standards that are applicable to all registered entities. This provision is duplicative of a section in the Standard Processes Manual and is not handled by CMEP personnel.

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| Maintenance of Reliability Standards information | EEL opposes removal of this duplicative provision from the CMEP because the posting of Reliability Standards is a critical resource for registered entities to understand regulatory requirements. | NERC is not proposing to change the posting of Reliability Standards information, so there will be no loss of resources for registered entities. |

Interaction with the Compliance Enforcement Authority

- NERC proposes to simplify terminology to indicate that registered entities interact and correspond with a single Compliance Enforcement Authority (CEA), as opposed to NERC and the Regional Entity.

Implementation Plans

- NERC proposes to update the ROP to include a single CMEP Implementation Plan that includes ERO Enterprise-wide and Regional Entity-specific reliability risks. NERC no longer has separate NERC and Regional Entity implementation plans.
- NERC proposes to change the initial posting of the annual Implementation Plan from September 1 to one posting “on or about November 1 of the calendar year preceding implementation.” The earlier posting requirement for the NERC implementation plan allowed time for development of the Regional Entity implementation plans.

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| Date for posting CMEP Implementation Plan | IPCO has concerns with the later date for posting of the CMEP Implementation Plan. IPCO states that the earlier posting date allows registered entities to identify and budget for compliance efforts associated with internal monitoring. The additional time enables an entity to perform accurate risk assessments that may include the identified risk elements related to the NERC Reliability Standards. The entity may then develop and communicate to business units the associated internal monitoring for the next year. | <p>The proposed revisions reflect the process that has been in place for the last two CMEP Implementation Plans following elimination of the Regional Entity appendices.</p> <p>For a registered entity’s planning, the risk elements should remain, and have remained, relatively static over time. The CMEP Implementation Plan incorporates the risks identified by the Reliability Issues Steering Committee (RISC), as well as issues included in NERC’s State of Reliability Report (SoR Report) and Long-Term Reliability Assessment (LTRA). The RISC report, SoR Report, and LTRA are useful resources for registered entities when allocating their reliability and compliance resources.</p> |
| Inputs for CMEP Implementation Plan | EEL recommends input on the CMEP Implementation Plan should include NERC standing committees. | NERC’s proposed inputs include data from “the expert judgment of NERC and Regional Entity staff, committees, and subcommittees.” The standing committees, including but not limited to the RISC and the Reliability and Security Technical Committee |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| | | (RSTC), are among the committees and subcommittees with expertise that informs the CMEP Implementation Plan each year. |
| Inputs for prioritizing risks | APPA and LPPC advocates incorporating the ERO Enterprise's <i>Framework to Address Known and Emerging Reliability and Security Risks (Framework)</i> into the risk-based decision-making that informs the CMEP Implementation Plan and guides ERO Enterprise CMEP priorities. APPA and LPPC suggest that it is premature to revise the CMEP before implementing the <i>Framework</i> and associated risk registry. | The products of the RISC and RSTC are key inputs into the CMEP Implementation Plan developed each year. The <i>Framework</i> cited by APPA and LPPC informs <i>what</i> the ERO Enterprise focuses on in its CMEP activities. The proposed ROP revisions for the CMEP inform <i>how</i> the ERO Enterprise conducts its CMEP activities. CMEP activities to enforce compliance with Reliability Standards are components of the ERO Enterprise's holistic approach to identifying and mitigating risks to the reliability and security of the bulk power system. |
| Identification of risk elements in CMEP Implementation Plan | APPA and LPPC request additional clarity on how NERC considers data when developing the CMEP Implementation Plan. | The type of detail requested by APPA and LPPC is beyond the scope of Rules of Procedure. The CMEP Implementation Plan describes the various inputs that determine the risk elements for prioritization from year to year. The CMEP Implementation Plan process benefits from the expertise and professional judgment of subject matter experts from across the ERO Enterprise. Importantly, those subject matter experts use information developed by industry experts through the RISC and other stakeholder groups. |
| Regional risks | TAPS supports the elimination of Regional CMEPs and Regional CMEP Implementation Plans but seeks clarity on how the ERO Enterprise will account for regional risk variances in the ERO CMEP Implementation Plan. | The ERO Enterprise is able to include regional-specific risks in the ERO CMEP Implementation Plan. The 2020 CMEP Implementation Plan included a risk specific to Texas RE related to resource adequacy. Also, if there are differences in risk from region to region for a specific risk element, the ERO Enterprise can describe those differences in the CMEP Implementation Plan. |

Information Protection during CMEP Activities

- NERC proposes to state that when providing information to a CEA, registered entities are responsible for complying with the information protection requirements of Applicable Governmental Authorities, which would include FERC and Canadian regulatory authorities.

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| Compliance with information protection regulations of Applicable Governmental Authorities | EEl recommends removing the proposed addition because the ROP already includes a requirement to comply with Applicable Governmental Authorities. | NERC proposed the additional language to make the information protection obligations approximately reciprocal between the CEA and the registered entities. NERC will retain the proposed addition. |
| Registered entity retention of sensitive information | EEl recommends adding language to indicate that the registered entity may retain certain sensitive information at the registered entity. | The CEA's authority to collect Documents, data, and information is governed by adherence to appropriate security procedures and other safeguards. These procedures and safeguards already include restricted handling of certain sensitive information. |

Compliance Audits

- NERC proposes to grant the CEA discretion as to when to conduct compliance audits and whether they will occur on the registered entity's site. The current ROP requires an audit every three years and with an on-site component for Reliability Coordinators (RCs), Balancing Authorities (BAs), and Transmission Operators (TOPs).
- NERC proposes no longer to require the posting of an Annual Audit Plan given (A) the use of Compliance Oversight Plans (COPs) which provide an indication of the frequency of monitoring activities, coupled with (B) the existing 90-day notice requirement for a Compliance Audit (or any other notice period for a monitoring activity). NERC does not propose to change the CEA's obligation to provide schedules of planned audits and any changes to such planned audits to NERC, FERC, and other Applicable Governmental Authorities. Under the current ROP, the Annual Audit Plan that gets posted annually requires several notification periods that are affected by any changes in the plan. Below are the current notice periods required under the Annual Audit Plan: (A) by Oct 1 – notify registered entities of audit scheduling; (B) give 60-day advance notice for any changes in audit scheduling; and (C) give 90-day notice of commencement of a scheduled Compliance Audit.

- NERC proposes to clarify the shift from Compliance Audits examining all Reliability Standards to risk-based Compliance Audits.
- NERC proposes to redefine the start and end dates of Compliance Audits. Specifically, NERC notes that the beginning date will be indicated in the notice of the Compliance Audit. The beginning date will no longer be tied to the end date of the prior Compliance Audit. NERC also proposes to define the end date of the audit as the date of the notice. The end date will no longer be defined as “not a specified date prior to the scheduled start of the Compliance Audit.”
- NERC also proposes that the retention period for such audits will no longer be for the entire period covered by the Compliance Audit. Rather, 1) the evidence retention period for activities performed at least once every three calendar years will be the lesser of “three years or the retention period described in Reliability Standards” and 2) for activities performed on a periodic basis of greater than three calendar years, the CEA may request evidence showing performance at the last required interval and evidence establishing the prior intervals.
- NERC proposes to eliminate the requirement to post Compliance Audit reports publicly. Instead, NERC proposes to replace this practice with a posting of Compliance Audit results that would include information such as: (A) registered entity name, (B) NCR information, (C) audit period covered, and (D) any potential noncompliance.

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| Compliance Audits of RCs, BAs, and TOPs | APPA and LPPC support removing the requirement to perform a Compliance Audit of RCs, BAs, and TOPs at least once every three years. | Thank you for your comments. |
| Compliance Audit Frequency and Format | TAPS supports the proposal to give CEAs discretion over when to conduct Compliance Audits and whether to have an on-site component. | Thank you for your comments. |
| Audit guides | EEI opposes the removal of the reference to the posting of audit guides. | NERC proposed removal of the term “audit guides” because such documents do not exist. NERC is not proposing to remove posted Reliability Standard Audit Worksheets or Compliance Guidance documents (Implementation Guides developed by industry or CMEP Practice Guides developed by NERC and the Regional Entities). |
| Annual Audit Plan | In lieu of posting the Annual Audit Plan, LADWP recommends nine months advance notice of Compliance Audits. | NERC will revise the scheduling language to include at least 270 days’ notice of upcoming Compliance Audits. |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| Annual Audit Plan | IPCO does not support eliminating the requirement to post the Annual Audit Plan. IPCO states that while the COP may include the frequency of an expected Compliance Audit, not knowing at least the quarter in which the Compliance Audit will occur reduces the registered entity's ability to plan and prepare robust compliance packages for the Compliance Audit. IPCO argues that because CEAs are required to provide an Annual Audit Plan to NERC, FERC, and other Applicable Governmental Authorities, it would not take additional effort to post the Annual Audit Plan for registered entity reference. IPCO suggests that the Annual Audit Plan also include the planned beginning and end dates for each Compliance Audit of included in the Annual Audit Plan. | NERC will revise the scheduling language to include at least 270 days' notice of upcoming Compliance Audits. |
| Annual Audit Plan | CAISO does not support eliminating the requirement to post the Annual Audit Plan. CAISO cites its COP as an insufficient indication of the frequency of a Compliance Audit, as the COP includes a target interval of every 1-3 years. CAISO states the COP is not specific enough for registered entity planning. | NERC will revise the scheduling language to include at least 270 days' notice of upcoming Compliance Audits. |
| Annual Audit Plan | CHPD expresses concern with eliminating the posting of the Annual Audit Plan without another mechanism to afford registered entities ample notification of a Compliance Audit. CHPD states the 90-day notice is not sufficient time for registered entities to budget and plan resources for Compliance Audit preparation. CHPD supports continued use of COPs to inform registered entities about the Reliability Standards and requirements that will be areas of focus in upcoming | NERC will revise the scheduling language to include at least 270 days' notice of upcoming Compliance Audits. |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| | Compliance Audits and Self-Certifications. CHPD argues for continued inclusion of existing appendices within COPs, as registered entities use these appendices for resource planning. | |
| Annual Audit Plan | MRO NSRF states the CEA should annually post and inform all registered entities selected for a Compliance Audit in the next calendar year. MRO NSRF proposes that this would allow the CEA to schedule and make registered entities aware of the CEA's intention to audit. The CEA could then select whether to perform the audit based on risk. | Thank you for your comments. Including a registered entity in an Annual Audit Plan and then choosing not to audit the registered entity would seemingly reduce certainty for registered entities as they prepare for upcoming CMEP activities. |
| Annual Audit Plan | PSE recommends retention of the current notification requirements because: 1) the COP does not provide "notice" of an upcoming monitoring activity; 2) the COP is not updated frequently; 3) 90 days is not sufficient time for an entity to plan and prepare for a Compliance Audit; and 4) the CEA is still required to prepare a schedule of planned Compliance Audits to provide to NERC, FERC, and other Applicable Governmental Authorities. | NERC will revise the scheduling language to include at least 270 days' notice of upcoming Compliance Audits. |
| Annual Audit Plan | EEl asserts that the ROP should include a clear expectation that CEAs develop and share audit schedules and oversight plans with registered entities for the upcoming year. | NERC will revise the scheduling language to include at least 270 days' notice of upcoming Compliance Audits. |
| Annual Audit Plan | APPA and LPPC recommend that CEAs develop and maintain audit schedules to give registered entities advance notice of at least nine months prior to the start of a Compliance Audit. | NERC will revise the scheduling language to include at least 270 days' notice of upcoming Compliance Audits. |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| | <p>TAPS agrees with APPA and LPPC that registered entities would benefit from at least nine months' notice before the start of a Compliance Audit.</p> <p>APPA and LPPC oppose elimination of the Annual Audit Plan without some other means to provide sufficient advance notice of an upcoming Compliance Audit.</p> | |
| Compliance Oversight Plans | APPA and LPPC support the use of COPs. In particular, they find significant value in the appendices included with COPs, which inform registered entities about the Reliability Standards and requirements that may be included in Compliance Audits or Self-Certifications. APPA and LPPC urge NERC and the Regional Entities to continue to use COPs with these appendices. | Thank you for your comments. |
| Timing of Notice of Compliance Audit | NRECA recommends increasing the time for prior notification of a Compliance Audit to at least 120 days. NRECA questions reliance on the COP as a means to inform about monitoring activities, as well as to convey results of the Inherent Risk Assessment of the registered entity. | <p>NERC will revise the scheduling language to include at least 270 days' notice of upcoming Compliance Audits.</p> <p>NERC recently posted responses to Frequently Asked Questions on COPs to enhance stakeholder understanding. NERC plans additional outreach on COPs through the Compliance and Certification Committee and other avenues throughout 2021. NERC will continue to work with the CEAs to ensure they develop COPs consistently and deliver useful CMEP-related information to registered entities.</p> |
| Scheduling of Compliance Audit | EEL questions the meaning of "regularly schedule audit" given the proposed removal of the three-year audit requirement for RCs, BAs, and TOPs. | NERC will remove the word "regularly." |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| Scoping of Compliance Audits | EEl recommends providing additional clarity about the criteria established by NERC for the conduct of Compliance Audits and development of COPs. | NERC provides information about the criteria for Compliance Audits through documents outside of the ROP. The documents that describe NERC's criteria for risk-based compliance monitoring include, for example: 1) CMEP Implementation Plan; 2) CMEP Practice Guides; 3) Reliability Standard Audit Worksheets; 4) Frequently Asked Questions; 5) ERO Enterprise Compliance Auditor Manual; and 6) ERO Enterprise Compliance Auditor Checklist. |
| Scoping of Compliance Audits | APPA and LPPC request transparency and predictability for registered entities in the scoping of Compliance Audits. | NERC and CEAs inform registered entities about the likely scope of upcoming CMEP activities through the COP, the Inherent Risk Assessment, and the CMEP Implementation Plan. These documents protect against the capricious scoping of audits warned by APPA and LPPC. |
| Notice of Compliance Audit | PSE observes that notification requirements are included in proposed Sections 4.1.1 and 4.1.2 and recommends consolidating the notification information into a single section. | Thank you for your comments. The notification provisions in Section 4.1.2 pertain only to unscheduled Compliance Audits. Those provisions should remain in that section to be associated with unscheduled Compliance Audits. NERC will, however, adopt the PSE recommendation and not add "and Notice" to the heading for Section 4.1.2. |
| Compliance Audit start and end dates | IPCO supports the proposal for the Compliance Audit end date to be the date of the audit notice. IPCO questions the removal of the connection between the end date of the previous audit and the start date of the current audit, suggesting that the start date should not be earlier than the end date of the previous audit period. | NERC appreciates the comments. The intent of the proposed revisions was to allow flexibility regarding the start date of the Compliance Audit to account for compliance monitoring activities since the previous Compliance Audit. NERC will not delete the sentence indicating the audit period will not begin prior to the end date of the previous Compliance Audit. |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| Compliance Audit start and end dates (audit period) | <p>NRECA seeks clarity on the setting of start and end dates for Compliance Audits.</p> <p>TAPS seeks clarity on the same subject to ensure that an auditor would not request evidence from a date before the start of the audit period.</p> | <p>These provisions, under the heading “Period Covered,” set the earliest date when a registered entity may need to demonstrate compliance and the last date the registered entity may need to demonstrate compliance. This audit period is distinct from the date the Compliance Audit commences (which will appear in the notification of the Compliance Audit).</p> <p>The start date of the audit period sets the earliest date for which an auditor could request evidence of compliance. Such evidence would be governed by the evidence retention periods that follow in Appendix 4C.</p> |
| Frequency of Compliance Audits | <p>CHPD strongly supports the elimination of the triennial requirement for Compliance Audits of BAs, TOPs, and RC. CHPD argues the proposal supports a culture of compliance at the registered entity and provides an incentive to maintain this culture. According to CHPD, the proposal encourages registered entities to focus resources and capital on risk-based improvement opportunities incentivizing improved performance by reducing regulatory burden.</p> | <p>Thank you for your comments.</p> |
| Compliance Audit Process | <p>MRO NSRF recommends removing the word “regularly” from the notification step for a Compliance Audit.</p> | <p>NERC will make this revision.</p> |
| Objections to members of the audit team | <p>TAPS points to unclear rules on timing of objections to members of the audit team.</p> | <p>Thank you for your comments. NERC has revised the deadlines for objection to audit team members based on TAPS’ comments.</p> |
| Evidence Retention | <p>MRO NSRF argues that the evidence retention specification for activities performed at least once</p> | <p>NERC does not agree with this contention. For activities performed on a periodic basis of three</p> |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| | every three years does not describe the limits on evidence the CEA can request and that the registered entity should retain. | calendar years or less, the CEA may request, and the registered entity must retain, evidence for performance for the lesser of: three years or the retention period in the Reliability Standard. |
| Evidence Retention | EEl recommends revising the language for evidence of periodic performance occurring less often than every three years, eliminating the reference to previous “testing” intervals. | NERC will revise the proposed language to refer to “evidence of previous intervals or schedules of performance.” |
| Evidence Retention | APPA and LPPC request clarification on the meaning of “evidence of previous testing intervals.” | NERC does not intend this provision to require evidence from the prior intervals. Instead, the provision would require evidence through a program document to indicate the periodicity for prior performance at an interval of greater than three years in order to support the registered entity’s production of only one set of performance records. |
| Compliance Audit report (timing of CEA drafting) | PSE recommends establishing a timeframe by which the CEA must provide the registered entity with a Compliance Audit report following completion of a Compliance Audit. | Thank you for your comment. The time needed to complete a Compliance Audit report will vary based on the characteristics of the Compliance Audit. A registered entity may contact the CEA if it has concerns about the timeliness of a draft Compliance Audit Report. Also, if the registered entity needs more than 10 business days to comment on the draft Compliance Audit report, then it may request more time from the CEA. |
| Compliance Audit report (timing of registered entity review) | NRECA recommends allowing more than 10 business days for the registered entity to review the draft Compliance Audit report and identify Confidential Information. NRECA recommends a 30-day review period for registered entities. | NERC will make this revision. |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| Content of Compliance Audit reports | EEl recommends adding language to give the registered entity the ability to object to the publication of its own Confidential Information. | The identification of Confidential Information proposed for redaction is the registered entity's opportunity to object to the publication of its own Confidential Information. |

Self-Certifications

- NERC proposes to eliminate the posting of a Self-Certification schedule. Instead, Self-Certifications are part of a risk-based approach to compliance monitoring detailed in a registered entity's Compliance Oversight Plan. This also allows flexibility to initiate Self-Certifications as needed based on emerging identified risks.

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| Self-Certification schedule | LADWP recommends retaining the current process with a 90-day notice period instead of the proposed 30-day notice period. NRECA also expresses concern about the notice period. | NERC will revise the proposal to a 60-day notice period for Self-Certifications. |
| Self-Certification schedule | APPA and LPPC recognize there may be value in flexibility on the scheduling of Self-Certifications based on emerging risks. APPA and LPPC advise using COPs with appendices listing the Reliability Standards for which the CEA may request a Self-Certification. APPA and LPPC assert that thirty days' advance notice is not sufficient time to prepare and make a Self-Certification. | NERC will revise the proposal to a 60-day notice period for Self-Certifications. |

Compliance Investigations

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| NERC-led Compliance Investigation | APPA and LPPC question the deletion of one situation where NERC would lead a Compliance Investigation, namely, “where the potential noncompliance is related to the Regional Entity or one of its affiliates, divisions, committees, or subordinate structure.” | NERC proposes deletion of this situation because: 1) there are no longer any Regional Entities affiliated with a registered entity (e.g., SPP RE or FRCC); and 2) there are no Reliability Standards applicable to the Regional Entities. |

Periodic Data Submittals

- NERC proposes to eliminate the step where the CEA issues a request for a Periodic Data Submittal. The data reporting schedule maintained by NERC and the CEA provides notice to registered entities regarding expected Periodic Data Submittals.

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| Periodic Data Submittal requests | LADWP recommends retaining the current process, which includes a request from the CEA for a Periodic Data Submittal. | Some Periodic Data Submittals are event-driven, i.e., they do not result from a CEA request. NERC is not proposing a change to the current Periodic Data Submittal process. Instead, the proposed change is to reflect the circumstances where a Periodic Data Submittal is appropriate without a request from the CEA. |

Anonymous Complaints

- NERC proposes to clarify that it can share the identity of an anonymous complainant with Regional Entities, but not other third parties.
- NERC proposes to eliminate the requirement that the CEA notify the registered entity if it determines that the initiation of another CMEP process is not warranted.

Self-Logging Program and Compliance Exception Program

- NERC proposes to exempt self-logged items from the preliminary screen and subsequent reporting and disposition processes. Self-logged noncompliance would be subject to review by the CEA and, upon request, by NERC and FERC.
- NERC proposes to refine the Compliance Exception Program by removing the requirement for the CEA to submit Compliance Exceptions to NERC for a 60-day review by NERC and FERC. Under the proposal, the CEA would identify minimal risk noncompliance appropriate for Compliance Exception treatment and designate the noncompliance as a Compliance Exception, thereby closing the noncompliance. NERC and FERC would have the opportunity to review the CEA's determinations (by sampling, periodically) to evaluate the noncompliance's minimal risk assessment and resolution as a Compliance Exception. The Compliance Exception would be considered closed unless it is later determined that: 1) there was a material misrepresentation of fact, or 2) the registered entity did not complete the specified mitigating activities.
- NERC proposes to clarify the treatment of Compliance Exceptions in a registered entity's compliance history. The revision would simplify the CEA's consideration of compliance history by looking at the registered entity's overall compliance history to determine whether the registered entity should continue to qualify for Compliance Exception treatment--instead of having to consider each prior Compliance Exception individually.

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| Self-logged noncompliance and the Preliminary Screen | NRECA suggests a revision to indicate that self-logged items <i>for which no further action is necessary</i> will be exempt from the Preliminary Screen. This revision would account for the circumstance where the CEA determines that a self-logged noncompliance should be resolved as a Compliance Exception or through an enforcement action. | NERC will incorporate this revision. |
| Self-logged noncompliance and the Preliminary Screen | LPPC supports exempting self-logged items from the Preliminary Screen and subsequent reporting and disposition processes. LPPC states that under a risk-based CMEP, reporting of potential noncompliance to NERC and FERC should be limited to potential noncompliance posing a greater risk to reliability. | Thank you for your comments. |
| Self-logged noncompliance | TAPS questions the proposal to exempt self-logged noncompliance from the Preliminary Screen and | NERC's proposal is for all self-logged noncompliance that posed a minimal risk and has been mitigated to |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| | <p>subsequent reporting and processing requirements. TAPS asserts that CEAs would have no guidance on which self-logged noncompliance would warrant further action, creating a risk of inconsistent implementation.</p> <p>TAPS also states that providing streamlined treatment for self-logged noncompliance but not for self-reported noncompliance would be discriminatory to smaller registered entities with few instances of noncompliance “for whom the burden of joining the self-logging program is unwarranted.”</p> | <p>be reviewed by the CEA but not subsequently reported to NERC and FERC. NERC and FERC would have the authority to review self-logs upon request. NERC and FERC have provided guidance to the CEAs about risk assessment, which has helped to ensure alignment in risk assessment from region to region.</p> <p>The ERO Enterprise’s experience with the expanded self-logging program in response to COVID-19 should lead to increased interest in the program. The ERO Enterprise is committed to making the self-logging program available and beneficial to all registered entities no matter their size, resources, or frequency of noncompliance.</p> <p>In response to TAPS comments, the ERO Enterprise will conduct targeted outreach to smaller entities to make the self-logging program more appealing and accessible for such entities.</p> <p>When a self-logged noncompliance poses a moderate or serious risk to reliability, that noncompliance would be resolved through the other disposition methods described in Appendix 4C and would be subject to the applicable rules for posting of noncompliance.</p> |
| Streamlining of Compliance Exceptions | APPA and LPPC support the proposed changes whereby the CEA would designate a potential noncompliance as a Compliance Exception, thereby closing the potential noncompliance without | Thank you for your comments. |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| | subsequent reporting to NERC and FERC as occurs in the current program. | |
| Reporting and posting of Compliance Exceptions | TAPS argues for continued posting of information for all non-CIP Compliance Exceptions. | <p>NERC proposes revisions to the Compliance Exception program based on the successful execution of the program over the last several years. NERC's and FERC's oversight of the Compliance Exception program, including through joint annual reviews, has shown that, with exceedingly limited exceptions, CEAs are able to assess minimal risk appropriately and ensure registered entities mitigate their potential noncompliance.</p> <p>NERC does not intend for its proposal to limit the availability of useful information to registered entities about how to improve their own compliance programs and prevent the types of challenges that can lead to high rates of minimal risk noncompliance. NERC and the CEAs would provide information through several means, including quarterly and annual CMEP reports, workshops and webinars, Frequently Asked Questions/Lessons Learned available on NERC's Enforcement and Mitigation webpage, and other periodic communications.</p> |

Compliance History

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| Consideration of registered entity's overall compliance history | LADWP recommends limiting how far back the CEA will go when considering the registered entity's compliance history. LADWP suggests guidance on | NERC appreciates the comments on consideration of compliance history. The NERC Sanction Guidelines (Appendix 4B to the NERC Rules of Procedure) include |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
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| | consideration of compliance history based on: 1) maturity of the registered entity's compliance program; 2) recent successful implementation of mitigation measures; 3) system upgrades; 4) increased budget and resources; 5) improved communication with the Regional Entity; and 6) enhanced compliance culture. | the general factors, including the age of the prior noncompliance, that affect consideration of compliance history. |
| Compliance Exceptions in a registered entity's compliance history | APPA and LPPC support clarifying treatment of Compliance Exceptions in a registered entity's compliance history based on FERC guidance in the order approving the Compliance Exception process. FERC stated that consideration of Compliance Exceptions in compliance history would involve "the relevant Regional Entity assessing any subsequent noncompliance of the same or closely-related Standards and Requirements to determine whether the registered entity should continue to qualify for compliance exception treatment regarding the subject of the repeat noncompliance." | Thank you for your comments. NERC supports adherence to the FERC language regarding the limited consideration of Compliance Exceptions in a registered entity's compliance history. |

Preliminary Screen

- NERC proposes to extend the time to conduct a Preliminary Screen from 5 days to 10 days.

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
|------------------------------|--|---|
| Notice of Preliminary Screen | PSE questions the accuracy of the term "Notice of Preliminary Screen," as it occurs after the Preliminary Screen has occurred. | Yes, the Notice of Preliminary Screen occurs after the Preliminary Screen. The Notice is to inform the registered entity that the Preliminary Screen has occurred and that the registered entity has evidence retention responsibilities related to the identified potential noncompliance. |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
|----------------------------------|--|--|
| Triggering of Preliminary Screen | NRECA recommends revising the Preliminary Screen triggering language to clarify that the registered entity identifies self-reported noncompliance, not the CEA. NRECA proposes: “The Preliminary Screen shall be conducted within ten (10) business days after the potential noncompliance is identified through one of the CMEP processes.” | NERC will incorporate this revision. |
| Preliminary Screening process | EEI recommends restoring the language including the Preliminary Screen for each CMEP process. | Along with a reference in the preface of Section 4, the Preliminary Screen has its own section indicating that it will occur for all identified noncompliance (except for self-logged noncompliance). Part of this ROP modernization effort is to reduce unnecessary repetition and duplication. To that end, NERC will retain the proposed references to the Preliminary Screen instead of listing the same step for each CMEP process. |

Enforcement Actions

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
|--------------------------------------|--|--|
| Challenging requests for information | APPA and LPPC object to the deletion of the opportunity for a registered entity to request a written determination from NERC’s general counsel if the registered entity believes a request for Documents, data, or information was unreasonable. | NERC proposed deletion of this provision because, to the best of NERC’s knowledge, no registered entity has ever requested such a determination. Nevertheless, to retain this element of due process, NERC will retain the language. |
| Hearing Procedures | APPA and LPPC question references to the Hearing Procedures in Attachment 2 of the CMEP “or the hearing procedure in effect for the CEA.” | A CEA must opt in to the Hearing Procedures in Attachment 2 and may subsequently opt out of those Hearing Procedures with sufficient notice. One CEA (Texas RE) has not opted in to the Attachment 2 |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
|------------|---------------------------------|--|
| | | Hearing Procedures, and any of the other CEAs may opt out of those procedures at any time. |

Settlement Agreements

- NERC proposes to allow the CEA to offer settlement for an Alleged Violation at any time even if the registered entity has not requested settlement negotiations.
- NERC proposes to eliminate the issuance of a letter with the final settlement terms, as settlement agreements and Notices of Penalty serve this purpose.

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
|---|---|--|
| Expedited Settlement Agreements | LADWP recommends formalizing the process for the Expedited Settlement Agreements used by WECC. | NERC appreciates the comments on Expedited Settlement Agreements. The proposed revisions regarding CEA initiation of the settlement process address this disposition method. Registered entities may consult with their CEA for additional guidance on the Expedited Settlement Agreement process. |
| Public posting of Settlement Agreements | NRECA suggests additional language for Section 5.6 to state that the public posting of violation information will only occur “where such information has not been deemed Confidential Information.” | Section 5.6 already states that the public postings will have the following information redacted: 1) Critical Energy Infrastructure Information, 2) Critical Electric Infrastructure Information, and 3) Confidential Information. That limitation governs all NERC posting of noncompliance information, so NRECA’s proposed revision is not necessary. |

Mitigation Plans

- NERC proposes to require formal Mitigation Plans only at the request of the CEA. Otherwise, mitigating activities are the preferred method for remediating a potential noncompliance.
- NERC proposes to increase the time, from 30 to 60 days each, for Regional Entity acceptance and NERC approval of a Mitigation Plan, and from 10 to 20 business days, for Regional Entity acceptance of a revised Mitigation Plan.

- NERC proposes to eliminate the practice of provisional acceptance of Mitigation Plans, as the Regional Entities no longer use provisional acceptance.
- NERC proposes to eliminate the requirement for public posting of mitigation plans for related Notices of Penalty, as dispositions of noncompliance include descriptions of the mitigating activities.
- NERC proposes to eliminate the requirement to provide quarterly updates on the implementation of Mitigation Plans given the baseline expectation to complete mitigation milestones within 3 months, with CEA flexibility to grant extensions.

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
|--|--|--|
| Mitigation Plans vs. Mitigating Activities | APPA and LPPC support the proposal to require formal Mitigation Plans only at the request of the CEA. | Thank you for your comments. |
| Submission of mitigating activities | PSE questions how registered entities may submit mitigating activities other than through a Self-Report or a Mitigation Plan. | Thank you for your comment. In the existing CMEP systems, the registered entity could provide mitigating activities in response to a Request for Information or through a supplement to a Self-Report. The ERO Enterprise's CMEP technology tool, Align, has a separate module for the registered entity to submit mitigating activities for any discovery method at any time. |
| Contents and timing for Mitigation Plans | <p>PSE notes that the bullet regarding milestones for mitigating activities does not conform to the remaining bullets.</p> <p>NRECA is uncertain about the language regarding completion of milestones in "typically no more than three (3) months."</p> | <p>NERC will revise the bullet for parallel construction to ensure accuracy and clarity of the underlying provisions.</p> <p>NERC will also revise the language as follows: "The CEA may agree to a mutually acceptable timeline for completion of milestones, typically no more than three (3) months <i>for each milestone</i>." [language and emphasis added]</p> |
| Mitigation milestones | APPA and LPPC support the proposal to permit the CEA to agree to a mutually acceptable timeline for | Thank you for your comments. |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
|--------------------------------|---|---|
| | completion of milestones, typically no more than three months. | |
| Mitigation Plan milestones | CAISO questions the expectations of registered entities with the elimination of a quarterly reporting requirement. CAISO questions whether registered entities will be required to seek extensions if implementation of a mitigation step takes longer than three months. | <p>NERC proposes elimination of quarterly reporting on Mitigation Plan progress to allow flexibility for registered entities and CEAs on the timing of updates to the CEA. The CEA will inform the registered entity about the expected timing for updates, which should generally track the milestones in the Mitigation Plan. For milestones that need more than three months to complete, quarterly reporting would be an unnecessary burden.</p> <p>Registered entities would seek extensions if implementation of a mitigation step takes longer than the time included in the approved mitigating activities.</p> |
| Submission of Mitigation Plans | PSE questions the requirement, in proposed Section 6.3, for submission of a Mitigation Plan within 30 days after notification of an Alleged Violation. PSE argues this requirement conflicts with the prior provision that a registered entity should only submit a Mitigation Plan after a request from the CEA. | <p>Thank you for your comment. A CEA will typically issue a Notice of Alleged Violation and Proposed Penalty or Sanction (NAVAPS) in rare cases where the CEA and the registered entity have not been able to agree on resolution of the noncompliance, including mitigating activities. The requirement to submit a Mitigation Plan within 30 days of NAVAPS receipt applies if the registered entity chooses not to contest the Alleged Violation and proposed penalty. The NAVAPS will include details on how to develop and submit mitigating activities after consultation with the CEA. The CEA will inform the registered entity about the best way to submit mitigating activities.</p> |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
|---|--|--|
| Review and Acceptance or Rejection of Revised Mitigation Plans | <p>APPA and LPPC propose to require CEA action within 20 business days after receipt of a revised Mitigation Plan: "If the CEA does not provide such notification to the Registered Entity within twenty (20) business days after receipt of a revised Mitigation Plan, the revised Mitigation Plan will be deemed accepted."</p> <p>APPA and LPPC propose this language for consistency between the requirements for the initial submission of a Mitigation Plan and submission of a revised Mitigation Plan.</p> <p>TAPS supports the proposal from APPA and LPPC.</p> | NERC will revise the language to require notification within 30 days (approximately equal to 20 business days), with the opportunity for the CEA to extend its review period. |
| Extensions of Milestones and Completion Dates | APPA and LPPC recommend adding language to allow CEAs flexibility to accept requests for extensions of milestones or mitigation completion dates received less than five business days before the completion date. | NERC will add language to allow for acceptance of later-filed requests for good cause. |
| Violations and Penalties during review and implementation of Mitigation Plans | APPA and LPPC oppose the language stating that registered entities are responsible for violations and assessment of penalties while Mitigation Plans are under consideration. | The language cited by APPA and LPPC is already part of the FERC-approved ROP and was only relocated in these revisions. Further, the language stands for the basic proposition that penalties for violations apply for the full duration of the violation until the registered entity mitigates the violation. |
| Certification of Mitigation Completion and Retention of Evidence | APPA and LPPC support the revision that registered entities must retain evidence of mitigation completion but are not required to submit it along with the certification unless requested by the CEA. | Thank you for your comments. |
| Public posting of mitigation information | TAPS favors continued posting of Mitigation Plans and information on mitigating activities. | For noncompliance that would be publicly posted, NERC is not proposing to change its practice to post information on mitigating activities for Spreadsheet |

| Topic Area | Summary of Stakeholder Comments | Action/Response and Notes |
|------------|---------------------------------|---|
| | | Notices of Penalty, FFTs, or Compliance Exceptions or to include Mitigation Plans, when they are used, as attachments to Full Notices of Penalty. |

Retention Requirements

- NERC proposes to state explicitly that registered entities have continuing obligations to retain data and information as directed by the CEA. These obligations apply to registered entity retention of CMEP data and information outside of Align or the ERO Secure Evidence Locker.

Attachment 1 – Process for Non-Submittal of Requested Data

- NERC proposes to expand the Attachment 1 process to apply outside of formal requests for data with Required Dates to general failure of a registered entity to work in good faith in connection with a CMEP process.

| Topic | Summary of Stakeholder Comments | Action/Response and Notes |
|-----------------------------|---|---|
| Submittal of Requested Data | APPA and LPPC suggest that registered entities “shall be required to provide Documents, data, or information <i>only in the manner in which the Registered Entity keeps such Documents, data, or information in the usual course of its business.</i> ” [emphasis added to proposed addition] | Under the FERC-approved ROP, CEAs have the authority to request Documents, data, and information in the manner they deem most appropriate. If a registered entity believes that a CEA’s request for information would cause an undue burden, then the registered entity should consult with its CEA on the manner in which it will provide the requested information. Adopting APPA and LPPC’s proposed language would unduly limit the CEA’s ability to request the information in a format that best enables it to perform its CMEP responsibilities. |

4. NERC Rules of Procedure Appendix 2 – *Definitions*

| Topic | Summary of Stakeholder Comments | Action/Response and Notes |
|--|--|--|
| Potential Noncompliance | Several commenters suggest additional harmonization of terms to ensure capitalization of defined terms when used in other sections, including in the definition of another defined term. | NERC will use its best efforts to ensure consistency and harmonization in the use of defined terms throughout the ROP. |
| “Self-Logging” definition | PSE suggests revising the definition to refer to “potential” noncompliance instead of “possible” noncompliance. | NERC will incorporate this revision. |
| “Special Protection System” definition | MRO NSRF recommends updating the definition of “Special Protection System” to align with the NERC Glossary of Terms and the use of the term “Remedial Action Scheme.” | Thank you for your comment. The proposed revisions to definitions in this project are limited to terms related to the CMEP. Revisions to the definition of “Special Protection System,” along with other Reliability Standards-related or NERC Glossary of Terms-related revisions, will be part of a subsequent ROP project focused on Reliability Standards and the Standard Processes Manual. |

5. Additional Comments and Suggestions

| Topic | Summary of Stakeholder Comments | Action/Response and Notes |
|---|---|---|
| Regional Entities in the Registered Ballot Body | TAPS supports the elimination of ROP language regarding Regional Entity compliance with Reliability Standards. TAPS suggests using this opportunity to remove Segment 10 from the Registered Ballot Body. | Thank you for your comments. TAPS suggestion is beyond the scope of this project and will be provided to the NERC Standards Department for consideration. |

Attachment 10

Sections 600 and 900
Clean



Rules of Procedure

SECTION 600 — PERSONNEL CERTIFICATION AND CREDENTIAL MAINTENANCE PROGRAM

601. Scope of Personnel Certification and Credential Maintenance Program

Maintaining the reliability of the Bulk Power System through implementation of the Reliability Standards requires skilled, and qualified personnel, including system operators. NERC shall develop a Personnel Certification and Credential Maintenance Program to:

1. provide the mechanism to determine system operators' essential knowledge relating to NERC Reliability Standards as well as principles of Bulk Power System operations;
2. administer a system operator Certification exam;
3. award the system operator Certification Credential to individuals who pass the exam; and,
4. prescribe requirements for System Operators to maintain their Certification Credential.

The NERC Personnel Certification and Credential Maintenance Program shall be international in scope consistent with the ERO's international regulatory responsibility for the reliability of the Bulk Power System in North America.

NERC Reliability Standards define which system operators require certification pursuant to the NERC Personnel Certification Program.

The NERC Personnel Certification Governance Committee (PCGC) is the governing body that both establishes the policies, sets fees, and monitors the performance of the Personnel Certification and Credential Maintenance Program for system operators.

602. Structure of ERO Personnel Certification and Credential Maintenance Program

1. PCGC shall develop a system operator program manual, approved by the NERC Board of Directors, which outlines the following:
 - 1.1 requirements for administering the system operator examinations;
 - 1.2 requirements for exam eligibility;
 - 1.3 requirements for awarding the Certification Credential;
 - 1.4 requirements for Certification Credential maintenance;

1.4.1 NERC requires a system operator to earn 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.

1.4.2 NERC requires a system operator to request a renewal and submit the appropriate fee for Certification renewal evaluation.

1.5 dispute resolution procedures; and

1.6 disciplinary action guidelines.

2. PCGC shall develop a Credential Maintenance Program and maintain an accompanying manual, which outlines the following:

2.1 requirements for approving continuing education Providers and Learning Activities;

2.2 requirements for auditing continuing education Providers and Learning Activities;

2.3 multi-layer review process for disputed application reviews, interpretations of guideline and standards, probation or suspension of NERC-approved Provider status, and credential maintenance disputes; and,

2.4 requirements on fees for continuing education Providers and Learning Activities.

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

- 1. The PCGC shall develop exams to evaluate individual competence in a manner that is objective, and fair to all candidates, and to determine essential knowledge relating to NERC Reliability Standards as well as principles of the Bulk Power System operations.
- 2. The PCGC shall oversee exam administration as follows:

- 1.1 Adopt and implement a formal policy of periodic review of exams to assess ongoing relevance to knowledge and skill needed in the discipline; and
 - 1.2 Conduct ongoing studies to substantiate the reliability and validity of exams.
3. The PCGC shall develop and utilize policies and procedures to ensure the integrity and security of exams and the transparency of test administration consistent with the following:
 - 1.1 The PCGC shall establish pass/fail levels that protect the public with a method that is based on competence and generally accepted standards in the psychometric community as being fair and reasonable;
 - 1.2 The PCGC shall conduct ongoing studies to substantiate the reliability and validity of the exams;
 - 1.3 The PCGC shall dictate how long examination records are kept in their original format; and
 - 1.4 The PCGC shall demonstrate that different revisions of the exams assess equivalent content.

607. Public Information About the Personnel Certification Program

The PCGC shall maintain and publish the following:

1. a summary of the information, knowledge, or functions covered by each examination administered pursuant to the Personnel Certification Program; and
2. an annual summary of Certification activities for the Personnel Certification Program, including, the number of examinations delivered, the number of applicants who passed, the number of applicants who failed, and the number of applicants certified.

608. Responsibilities to Applicants for Certification or Re-Certification

The PCGC shall adhere to the following with respect to personnel applicants:

1. 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;
2. 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;

3. implement a formal policy for the periodic review of eligibility criteria and application procedures for fairness;
4. provide competently proctored examination sites; and
5. uniformly provide applicants with examination results and give content summary after the examination.

609. Responsibilities to Employers of Certified Personnel

The PCGC shall adhere to the following with respect to certified personnel:

1. demonstrate that the exams adequately measure essential knowledge relating to NERC Reliability Standards as well as principles of Bulk Power System operations;
2. award Certification and re-Certification only after the skill and knowledge of the individual have been evaluated and determined to be acceptable;
3. maintain, in an electronic format, a current list of those personnel certified in the programs and have policies and procedures that delineate what information about a Certification Credential holder may be made public and under what circumstances; and
4. develop formal policies and procedures for discipline of a Certification 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.

610. [PLACEHOLDER]

SECTION 900 — TRAINING AND EDUCATION

901. Scope of the Training and Education Program

Assuring the Reliable Operation of the North American Bulk Power System requires informed knowledgeable and skilled personnel. NERC shall oversee the coordination and delivery of learning materials, resources, and activities to allow for training and education of:

1. ERO Enterprise staff supporting statutory and delegation-related activities; and
2. Bulk Power System industry participants consistent with ERO functional program requirements.

902. [PLACEHOLDER]

Attachment 11

Sections 600 and 900 Redline



Rules of Procedure

SECTION 600 — PERSONNEL CERTIFICATION AND CREDENTIAL MAINTENANCE PROGRAM

601. Scope of Personnel Certification and Credential Maintenance Program

Maintaining the reliability of the Bulk Power System through implementation of the Reliability Standards requires skilled, and qualified personnel, including system operators. NERC shall develop a Personnel Certification and Credential Maintenance Program to:

1. ~~p~~Provide the mechanism to determine system operators' essential knowledge relating to NERC Reliability Standards as well as principles of Bulk Power System operations;
2. administer a system operator Certification exam; ~~and,~~
3. award the system operator Certification Credential to individuals who pass the exam; and,
- ~~3.4. prescribe requirements for System Operators to maintain their Certification Credential through Continuing Education Hours (CEHs).-~~

The NERC Personnel Certification and Credential Maintenance Program shall be international in scope consistent with the ERO's international regulatory responsibility for the reliability of the Bulk Power System in North America.

NERC Reliability Standards define which system operators require certification pursuant to the NERC Personnel Certification Program.

The NERC Personnel Certification Governance Committee (PCGC) is the governing body that both establishes the policies, sets fees, and monitors the performance of the Personnel Certification and Credential Maintenance Program for system operators.

602. Structure of ERO Personnel Certification and Credential Maintenance Program

1. ~~NERC-PCGC shall develop a system operator certification program manual, approved by the PCGC/NERC Board of Directors, which outlines the following:~~
 - ~~1.1 The PCGC shall develop and update, as necessary, a manual which describes the following:~~
 2. requirements for administering the system operator examinations;
 3. 1.2 requirements for exam eligibility;
 4. 1.3 requirements for awarding the Certification Credential;

1.4 requirements for Certification Credential maintenance;

1.4.1 NERC requires a system operator to earn 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.

1.4.2 NERC requires a system operator to request a renewal and submit the appropriate fee for Certification renewal evaluation.

~~5.~~

~~6.~~ 1.5 dispute resolution procedures; and

1.6 disciplinary action guidelines.

2. NERC-PCGC shall develop a Credential Maintenance Program and maintain an accompanying manual, approved by the PCGC, which outlines the following:

21.1 Requirements for approving continuing education Providers and Learning Activities;

21.2 Requirements for auditing continuing education Providers and Learning Activities;

12.3 A multi-layer review process for disputed application reviews, interpretations of guideline and standards, probation or suspension of NERC-approved Provider status, and Continuing Education Hours (CE Hours) credential maintenance disputes; and,

12.4 Requirements on fees for continuing education Providers and Learning Activities.

~~— NERC requires a system operator to earn 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.~~

~~— NERC requires a system operator to request a renewal and submit the appropriate fee for Certification renewal evaluation.~~

~~7.~~

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

1. The PCGC shall develop exams to evaluate individual competence in a manner that is objective, and fair to all candidates, and to determine essential knowledge relating to NERC Reliability Standards as well as principles of the Bulk Power System operations.
2. The PCGC shall oversee exam administration as follows:
 - 1.1 Adopt and implement a formal policy of periodic review of exams to assess ongoing relevance to knowledge and skill needed in the discipline; and
 - 1.2 Conduct ongoing studies to substantiate the reliability and validity of exams.
3. The PCGC shall develop and utilize policies and procedures to ensure the integrity and security of exams and the transparency of test administration consistent with the following:
 - 1.1 The PCGC shall establish pass/fail levels that protect the public with a method that is based on competence and generally accepted standards in the psychometric community as being fair and reasonable;
 - 1.2 The PCGC shall conduct ongoing studies to substantiate the reliability and validity of the exams;
 - 1.3 The PCGC shall dictate how long examination records are kept in their original format; and
 - 1.4 The PCGC shall demonstrate that different revisions of the exams assess equivalent content.

607. Public Information About the Personnel Certification Program

The PCGC shall maintain and publish the following:

1. a summary of the information, knowledge, or functions covered by each examination administered pursuant to the Personnel Certification Program; and
2. an annual summary of Certification activities for the Personnel Certification Program, including, the number of examinations delivered, the number of applicants who passed, the number of applicants who failed, and the number of applicants certified.

608. Responsibilities to Applicants for Certification or Re-Certification

The PCGC shall adhere to the following with respect to personnel applicants:

1. 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;
2. 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;
3. implement a formal policy for the periodic review of eligibility criteria and application procedures for fairness;
4. provide competently proctored examination sites; and
5. uniformly provide applicants with examination results and give content summary after the examination.

609. Responsibilities to Employers of Certified Personnel

The PCGC shall adhere to the following with respect to certified personnel:

1. demonstrate that the exams adequately measure essential knowledge relating to NERC Reliability Standards as well as principles of Bulk Power System operations;
2. award Certification and re-Certification only after the skill and knowledge of the individual have been evaluated and determined to be acceptable;
3. maintain, in an electronic format, a current list of those personnel certified in the programs and have policies and procedures that delineate what information about a Certification Credential holder may be made public and under what circumstances; and
4. develop formal policies and procedures for discipline of a Certification 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.

610. Continuing Education Credential Maintenance Program[PLACEHOLDER]

~~2~~NERC shall develop a Credential Maintenance Program 321. — NERC shall develop and and maintain a continuing education program and maintain an accompanying manual, approved by the Reliability and Security Technical Committee (PCGCRSTC), which describesoutline the following:

~~231.1 Requirements for approving continuing education Providers and Learning Activities;~~

~~231.2 Requirements for auditing continuing education Providers and Learning Activities;~~

~~231.3 Multi-layer review process for disputed application reviews; interpretations of guideline and standards, probation or suspension of NERC-approved Provider status, and Continuing Education Hours (CE Hours) disputes; and,~~

~~231.4 Requirements on fees for continuing education Providers and Learning Activities;~~

~~3. — NERC requires a system operator to earn Continuing Education Hours (CE 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. NERC requires a system operator to request a renewal and submit the appropriate fee for Certification renewal evaluation.~~

~~to through which it approves Learning Activities~~

~~approve those within the electric utility industry by approving continuing education providers that meet NERC guidelines and standards. Information on how to become a NERC-recognized continuing education provider is contained in the links below. Learning Activities and entities meeting NERC continuing education requirements.~~

~~23. The Personnel Subcommittee (PS), which reports to the NERC Operating Committee, is the governing body of the NERC Continuing Education Program that oversees development and implementation of the Continuing Education Program requirements.~~

~~34. The PS shall develop and update, as necessary, a manual, approved by the Operating Committee, which describes the following:~~

~~3.1 Requirements for approving continuing education Providers and activities;~~

~~3.2 Requirements for auditing continuing education Providers and activities;~~

~~3.3 Multi-layer review process for disputed application reviews, interpretations of guideline and standards, probation or suspension of NERC-approved Provider status, and Continuing Education Hour disputes; and~~

~~3.4 Requirements on fees for continuing education Providers and activities.~~

SECTION 900 — TRAINING AND EDUCATION

901. Scope of the Training and Education Program

Assuring the Reliable Operation of the North American Bulk Power System requires informed knowledgeable and skilled personnel. NERC shall ~~develop a program to~~ oversee the coordination and delivery of learning materials, resources, and activities to allow for training and education of:

1. ERO Enterprise staff supporting statutory and delegation-related activities; and
2. Bulk Power System industry participants consistent with ERO functional program requirements.

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902. ~~Continuing Education Program~~[PLACEHOLDER]

- ~~1. NERC shall develop and and maintain a continuing education program to approve those activities and entities meeting NERC continuing education requirements.~~
- ~~2. The Personnel Subcommittee (PS), which reports to the NERC Operating Committee, is the governing body of the NERC Continuing Education Program that oversees development and implementation of the Continuing Education Program requirements.~~
- ~~3. The PS shall develop and update, as necessary, a manual, approved by the Operating Committee, which describes the following:~~
 - ~~3.1 Requirements for approving continuing education Providers and activities;~~
 - ~~3.2 Requirements for auditing continuing education Providers and activities;~~
 - ~~3.3 Multi-layer review process for disputed application reviews, interpretations of guideline and standards, probation or suspension of NERC-approved Provider status, and Continuing Education Hour disputes; and~~
 - ~~3.4 Requirements on fees for continuing education Providers and activities.~~

