

## Agenda

# Corporate Governance and Human Resources Committee

December 7, 2017 | 11:00 a.m.-1:00 p.m. Eastern  
Conference Call

**Dial-in:** 1-800-281-7829 | Conference Code: 9133318

**Call to Order and Chair's Remarks**

**NERC Antitrust Compliance Guidelines**

### Agenda

- 1. Proposed Board Committee Restructuring\* – Approve and Recommend for Board of Trustees Approval**

\*Background materials included.

# Antitrust Compliance Guidelines

## I. General

It is NERC's policy and practice to obey the antitrust laws and to avoid all conduct that unreasonably restrains competition. This policy requires the avoidance of any conduct that violates, or that might appear to violate, the antitrust laws. Among other things, the antitrust laws forbid any agreement between or among competitors regarding prices, availability of service, product design, terms of sale, division of markets, allocation of customers or any other activity that unreasonably restrains competition.

It is the responsibility of every NERC participant and employee who may in any way affect NERC's compliance with the antitrust laws to carry out this commitment.

Antitrust laws are complex and subject to court interpretation that can vary over time and from one court to another. The purpose of these guidelines is to alert NERC participants and employees to potential antitrust problems and to set forth policies to be followed with respect to activities that may involve antitrust considerations. In some instances, the NERC policy contained in these guidelines is stricter than the applicable antitrust laws. Any NERC participant or employee who is uncertain about the legal ramifications of a particular course of conduct or who has doubts or concerns about whether NERC's antitrust compliance policy is implicated in any situation should consult NERC's General Counsel immediately.

## II. Prohibited Activities

Participants in NERC activities (including those of its committees and subgroups) should refrain from the following when acting in their capacity as participants in NERC activities (e.g., at NERC meetings, conference calls and in informal discussions):

- Discussions involving pricing information, especially margin (profit) and internal cost information and participants' expectations as to their future prices or internal costs.
- Discussions of a participant's marketing strategies.
- Discussions regarding how customers and geographical areas are to be divided among competitors.
- Discussions concerning the exclusion of competitors from markets.
- Discussions concerning boycotting or group refusals to deal with competitors, vendors or suppliers.

- Any other matters that do not clearly fall within these guidelines should be reviewed with NERC's General Counsel before being discussed.

### **III. Activities That Are Permitted**

From time to time decisions or actions of NERC (including those of its committees and subgroups) may have a negative impact on particular entities and thus in that sense adversely impact competition. Decisions and actions by NERC (including its committees and subgroups) should only be undertaken for the purpose of promoting and maintaining the reliability and adequacy of the bulk power system. If you do not have a legitimate purpose consistent with this objective for discussing a matter, please refrain from discussing the matter during NERC meetings and in other NERC-related communications.

You should also ensure that NERC procedures, including those set forth in NERC's Certificate of Incorporation, Bylaws, and Rules of Procedure are followed in conducting NERC business.

In addition, all discussions in NERC meetings and other NERC-related communications should be within the scope of the mandate for or assignment to the particular NERC committee or subgroup, as well as within the scope of the published agenda for the meeting.

No decisions should be made nor any actions taken in NERC activities for the purpose of giving an industry participant or group of participants a competitive advantage over other participants. In particular, decisions with respect to setting, revising, or assessing compliance with NERC reliability standards should not be influenced by anti-competitive motivations.

Subject to the foregoing restrictions, participants in NERC activities may discuss:

- Reliability matters relating to the bulk power system, including operation and planning matters such as establishing or revising reliability standards, special operating procedures, operating transfer capabilities, and plans for new facilities.
- Matters relating to the impact of reliability standards for the bulk power system on electricity markets, and the impact of electricity market operations on the reliability of the bulk power system.
- Proposed filings or other communications with state or federal regulatory authorities or other governmental entities.
- Matters relating to the internal governance, management and operation of NERC, such as nominations for vacant committee positions, budgeting and assessments, and employment matters; and procedural matters such as planning and scheduling meetings.

## **Proposed Board Committee Restructuring**

### **Action**

Approve and recommend for Board of Trustees (Board) approval.

### **Background**

At its November 2017 meeting, the Board Chair requested that the Corporate Governance and Human Resources Committee (CGHRC), pursuant to its mandate, consider a potential restructuring of the Standards Oversight and Technology Committee (SOTC). The CGHRC is considering whether it would be beneficial to focus the SOTC on technology related initiatives at NERC, including cybersecurity and Board oversight of the Electricity Information Sharing and Analysis Center (E-ISAC). With respect to the role of the SOTC regarding reliability standards, the CGHRC will consider whether, given of the standards development process, that role could be assumed by the Board, with an allocation of two specific responsibilities of the SOTC to the Board of Trustees Compliance Committee (BOTCC).

NERC staff has prepared a draft mandate for a new Technology and Security Committee (TSC), which is marked to show changes from the current SOTC mandate, and proposed revisions to the existing BOTCC mandate to reflect the allocation of responsibilities as described above. Revised mandates for the TSC and BOTCC to align with these objectives are included here for the CGHRC's approval and recommendation for Board approval.

With respect to the Board oversight of the standards program, in addition to the Board's role, the Board Chair has proposed that the Vice Chair would be a direct liaison on behalf of the Board to the Standards Committee.

### **Summary**

The proposed TSC mandate provides for an oversight focus on NERC's information technology and security programs and the E-ISAC, as well as the performance of other responsibilities as directed by the Board.

The proposed changes to the BOTCC mandate incorporate two of the removed responsibilities from the SOTC's mandate: (1) serving as the Level 2 Appeals Panel as set forth in the NERC Standard Processes Manual, which is an Appendix to the NERC Rules of Procedure; and (2) acting under the RSAW Revision Process. These are the only substantive changes to the BOTCC's responsibilities under its mandate.

# DRAFT Board of Trustees ~~Standards Oversight and~~ Technology and Security Committee Mandate

Approved by the Board of Trustees: February XX, 2018

## Committee Membership

The Board of Trustees ~~Standards Oversight and~~ Technology and Security Committee (~~SOTCTSC~~ or the Committee) of the North American Electric Reliability Corporation (NERC) shall be composed of not less than three and not more than six of the independent members of the Board of Trustees (Board). The members of the ~~SOTCTSC~~ shall be appointed or reappointed by the Board at the regular meeting of the Board immediately following each Annual Meeting of the Members Representative Committee. Each member of the ~~SOTCTSC~~ shall continue to be a member thereof until a successor is appointed, unless a member resigns, is removed, or ceases to be a trustee of the corporation. When a vacancy occurs at any time in the membership of the ~~SOTCTSC~~, it may be filled by the Board.

## Purpose

The purpose of the ~~SOTCTSC~~ is to assist the Board by providing oversight to the corporation's ~~standards development processes and the overall strategic focus and progress of the standards development program, and to provide oversight to the corporation's~~(i) information technology program, (ii) information security program, and (iii) Electricity Sector Information Sharing and Analysis Center (E-ISAC), as well as performing such other responsibilities as directed by the Board or this Mandate.

## Committee Authority and Responsibilities

To carry out its purpose, the ~~SOTCTSC~~ shall have the following authority and responsibilities:

### Technology and Information Security:

1. As part of the annual business plan and budgeting process, provide the Finance and Audit Committee and the Board with recommendations regarding management proposed resource requirements and funding for (i) the design, procurement, installation, operation, and maintenance of information technology hardware, software and applications, including hardware, software, and applications hosted by third parties, supporting NERC's operations and program area initiatives; and, (ii) investments in, or supporting, the development of new technology to improve and ensure the reliability of the bulk power system in North America, historic examples of which included funding for the development of transmission system awareness tools, synchrophaser technology, technology used to monitor and manage transmission congestion, and data reporting tools providing information regarding generator, transmission system, and demand side resource availability and performance.

2. ~~Review with NERC management~~Provide oversight on behalf of the Board with respect to the corporation's overall computer systems environment, including procedures to keep the systems secure and contingency plans developed to deal with possible computer failures.
3. Respond to the Board's requests to the Committee for advice and recommendations on any technology-related issues~~;~~.

**Standards:**

~~In collaboration~~E-ISAC:

1. Provide oversight on behalf of the Board of the E-ISAC and its related programs.
- ~~1. with the NERC Reliability Issues Steering Committee (RISC), work with NERC management to identify strategic priorities for reliability standards development and provide feedback to NERC Standards Committee, the Board, and NERC management on the annual standards development work plan.~~
- ~~2. Monitor overall results of the standards development process, including quality and timeliness of standards development work, and make recommendations to the NERC Standards Committee, the Board, and NERC management regarding potential improvements to the standards development process.~~
- ~~3. In collaboration with the RISC and management, assess emerging reliability risks affecting standards and make recommendations to the Board as appropriate.~~
- ~~4. Monitor progress in addressing regulatory mandates and directives related to standards.~~
- ~~5. Serve as the Level 2 Appeals Panel as set forth in the NERC Standards Process Manual, which is an Appendix to the NERC Rules of Procedure.~~
- ~~6. Periodically review NERC's status with the American National Standards Institute.~~
- ~~7.2.~~ Respond to the Board's requests for advice and recommendations on any ~~standards-E-ISAC~~ related ~~referred to it by the Board~~ issues.

**Additional Responsibilities:**

- ~~1. In connection with NERC's Reliability Standard Audit Worksheet Revision Process (RSAW Revision Process), take any actions contemplated by the RSAW Revision Process, as such Process is amended from time to time.~~
1. Recommend to the Board such actions as may further the purposes of NERC's technology and information security, and NERC's E-ISAC and related programs.
2. Perform such other functions as may be delegated from time to time by the Board.

**Committee Meetings**

The ~~SOTGTSC~~ shall meet at least twice a year by conference call or in person. Meetings may occur at

the same place in conjunction with the regular Board meetings of the corporation, or as determined by the members of the ~~SOTETSC~~, using the same meeting procedures established for the Board. Meetings may be held in either open or closed session as set forth in the Bylaws of the corporation.

A majority of the Committee members shall constitute a quorum. Except where prescribed differently by law: (a) any action or decision of the ~~SOTETSC~~ requires a vote of a majority of the Committee members then in attendance at any Committee meeting provided a quorum is present; and (b) participation may be telephonic or by Action ~~without~~ Without a Meeting. The Committee may hold special meetings as circumstances require. Minutes of each Committee meeting shall be maintained as part of the Committee's record.

### **Governance**

The Board, or in the event of their failure to do so, the members of the ~~SOTETSC~~, shall appoint a chair from among their members. The ~~SOTETSC~~ Chair shall be responsible for leadership of the Committee, including scheduling of meetings, setting agendas, presiding over Committee meetings, and making reports to the Board. A member(s) of the NERC staff shall assist the Chair and shall serve as the non-voting secretary.

### **Review**

The ~~SOTETSC~~ shall review this mandate annually and recommend to the Board Corporate Governance and Human Resources Committee any changes it considers advisable. Any changes must be approved by the full Board. The ~~SOTETSC~~ shall complete a self-assessment annually to determine its effectiveness.

# **DRAFT Board of Trustees Compliance Committee Mandate**

Approved by the Board of Trustees: ~~August 13, 2015~~ February XX, 2018

## **Committee Membership**

The Board of Trustees Compliance Committee (BOTCC or the Committee) of the North American Electric Reliability Corporation (NERC) shall be composed of not less than three and not more than seven of the Independent members of the Board of Trustees (Board). The members of the BOTCC shall be appointed or reappointed by the Board at the regular meeting of the Board immediately following each Annual Meeting of the Members Representative Committee. Each member of the BOTCC shall continue to be a member thereof until a successor is appointed, unless a member resigns, is removed, or ceases to be a trustee of the corporation. When a vacancy occurs at any time in the membership of the BOTCC, it may be filled by the Board.

## **Purpose**

The purpose of the BOTCC is to assist the Board with governance, oversight, guidance, and policies to help assure the NERC Compliance Monitoring and Enforcement Program (CMEP) and the NERC Organization Registration and Certification Program (ORCP), as administered by NERC and the Regional Entities to which NERC has delegated authority pursuant to Regional Delegation Agreements, support the reliability of the North American bulk power system, and are administered fairly and efficiently.

## **Committee Authority and Responsibilities**

To carry out its purpose, the BOTCC shall have the following authority and responsibilities:

### **Oversight:**

1. Oversee the CMEP and ORCP strategies and approaches developed and implemented by the management of NERC and the Regional Entities to assure the reliability of the bulk power system, including identification of key risks to be addressed through CMEP and ORCP activities.
2. Evaluate the effectiveness of CMEP strategies and program execution by reviewing measures of bulk electric system reliability performance and other CMEP program metrics.
3. Oversee and review implementation of CMEP and ORCP programs by management of NERC and Regional Entities to ensure the programs are operated in a consistent manner and conform to all regulatory requirements, Rules of Procedure, and other practices needed to provide objective, fair, and effective compliance and enforcement.
4. Oversee and review penalties, sanctions, and mitigation of noncompliance to ensure such actions are effective in maintaining and improving bulk power system reliability.

### **Approvals and Appeals:**

1. Approve Notices of Penalty or Sanction and other enforcement actions required to be filed with the Federal Energy Regulatory Commission and other applicable governmental authorities, provided that the BOTCC may delegate its authority to NERC staff with respect to the approval of any matter.
2. Serve as the appeal body of compliance violations, penalties, or sanctions pursuant to NERC's Rules of Procedure and any other applicable laws, rules, regulations, orders, or policies.
3. Serve as the appeal body for any appeals of findings resulting from audits of the regional implementation of the CMEP heard by the NERC Compliance and Certification Committee, pursuant to NERC's Rules of Procedure and any other applicable laws, rules, regulations, orders, or policies.
4. Hear and adjudicate any challenges by candidates for inclusion on the NERC compliance registry, pursuant to NERC's Rules of Procedure and any other applicable laws, rules, regulations, orders, or policies.
5. When resolving CMEP and ORCP conflicts among NERC, Regional Entities, and Registered Entities, where appropriate, provide a supplementary explanation for the Committee's decision due to issues raised or to provide future guidance.
6. Serve as the Level 2 Appeals Panel as set forth in the NERC Standards Processes Manual, which is an Appendix to the NERC Rules of Procedure.
7. Review the appropriateness of proposed amendments to Reliability Standard Auditor Worksheets (RSAWs) to resolve comments that have not been addressed through other applicable steps pursuant to the NERC Reliability Standard Audit Worksheet Revision Process (RSAW Revision Process), as such Process may be amended.

### **Communication and Coordination:**

1. Ensure CMEP and ORCP programs and results are transparent, when appropriate, to reliability stakeholders.
2. Recommend to the Board such actions as may further the purposes of the CMEP and ORCP.
3. ~~Perform such other functions as may be delegated to it by the Board from time to time.~~

### **Additional Responsibilities:**

1. Perform such other functions as may be delegated to it by the Board.

### **Committee Meetings**

The BOTCC shall meet at least quarterly by conference call or in person. Meetings may occur at the same place in conjunction with the regular board meetings of the corporation, or as determined by the members of the BOTCC, using the same meeting procedures established for the Board. Meetings may be held in either open or closed session as set forth in the Bylaws of the Corporation.

A majority of the Committee members shall constitute a quorum. Except where prescribed differently by law: (a) any action or decision of the BOTCC requires a vote of a majority of the Committee members then in attendance at any Committee meeting provided a quorum is present; and (b) participation may be telephonic or by Action without a Meeting. The Committee may hold special meetings as circumstances require. Minutes of each Committee meeting shall be maintained as part of the Committee's record.

### **Governance**

The Board, or in the event of their failure to do so, the members of the BOTCC, shall appoint a chair from among their members. The BOTCC Chair shall be responsible for leadership of the Committee, including scheduling of meetings, setting agendas, presiding over Committee meetings, and making reports to the Board. A member(s) of the NERC staff shall assist the Chair and shall serve as the non-voting secretary.

### **Review**

The BOTCC shall review this mandate annually and recommend to the Board Corporate Governance and Human Resources Committee (CGHR) any changes it considers advisable. Any changes must be approved by the full Board. The BOTCC shall complete a self-assessment annually to determine its effectiveness.