

## NERC Compliance Public Bulletin #2010-004

### Guidance for Entities that Delegate Reliability Tasks to a Third Party Entity

#### Version 2.0

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#### I. Introduction

This guidance document is provided to facilitate a better understanding of the compliance responsibility and accountability for entities that delegate the performance of reliability related tasks to a third party.

The NERC *Rules of Procedure*, section 215 of the Federal Power Act (FPA),<sup>1</sup> and Federal Energy Regulatory Commission (FERC) precedent<sup>2</sup> are clear that an entity that is registered for a function identified in the NERC Compliance Registry is responsible for compliance with all NERC Reliability Standard requirements applicable to that function and is accountable for and subject to applicable sanctions and penalties associated with violations of such NERC Reliability Standard requirements.

Even so, compliance responsibility<sup>3</sup> for applicable NERC Reliability Standard requirements and accountability for violations thereof may be achieved through several means, including the following:<sup>4</sup>

1. **By Individual:** an entity is registered on the NERC Compliance Registry and such registered entity assumes full compliance responsibility and accountability; or
  
2. **By Written Contract:**<sup>5</sup> parties enter into a written agreement whereby:
  - a. a registered entity delegates the performance of some or all functional activities to a third party that is not a registered entity, and the registered entity retains full compliance responsibility and violation accountability; or

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<sup>1</sup> 16 U.S.C. § 824o.

<sup>2</sup> See NERC *Rules of Procedure* at section 500. (The NERC *Statement of Compliance Registry Criteria* is used to determine the reliability standards applicable to a registered entity.). See also Order No. 693 at P 94.

<sup>3</sup> See *Mandatory Reliability Standards for the Bulk-Power System*, 120 FERC ¶ 61,065 at P 20 (2007) (“Compliance responsibility means that the organization is responsible for ensuring compliance with a Reliability Standard and that the organization is liable for failure to comply.”).

<sup>4</sup> NERC filed proposed amendments to its Rules of Procedure that, if approved, will include a new Section 508, “Provisions Relating to Coordinated Functional Registration (CFR) Entities.”

<sup>5</sup> NERC *Statement of Compliance Registry Criteria (Rev. 5.1)*, Section III.d.2.

- b. a registered entity delegates the performance of some or all of the functional activities to a third party and the third party accepts full compliance responsibility for the specific functions it performs and violation accountability. In this case, there may be individual, concurrent or joint registration of the entities, depending on the nature of the contractual relationship and in any event, only the registered entity would be held responsible or accountable by a Regional Entity or NERC; or
3. **By Joint Registration Organization (JRO):**<sup>6</sup> each party is registered and is required to clearly identify and allocate compliance responsibility and violation accountability for their respective functions under applicable NERC Reliability Standard requirements; or
4. **By Coordinated Functional Registration (CFR):** each party is registered and is required to clearly identify and allocate compliance responsibility and violation accountability for their respective functions under applicable NERC Reliability Standard requirements.

## II. Registration Guidance<sup>7</sup>

Both the NERC *Statement of Compliance Registry Criteria (Rev. 5.1)* and FERC Order No. 693, provide guidance for registration of an entity in the NERC Compliance Registry for functional tasks that are delegated to and performed by another entity:

1. For example, the NERC *Statement of Compliance Registry Criteria (Rev. 5.1)*, Section III.d.2, provides an exemption for a Transmission Owner (TO) or Transmission Operator (TOP) to forego registration as a TO or TOP, if responsibilities for compliance with NERC Reliability Standards or associated requirements are transferred by written agreement to a third party entity:

*[Exclusion: A transmission owner/operator will not be registered based on these criteria if responsibilities for compliance with approved NERC reliability standards or associated requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a load-serving entity, G&T cooperative or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.]*

2. FERC Order No. 693, paragraph 143-145 provides additional guidance on registration issues generally and specifically:

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<sup>6</sup> See NERC *Rules of Procedure* at section 507.2 (“Where a JRO and any of its members or related entities agree, in writing, upon a division of compliance responsibility among them for one or more reliability standard(s) applicable to a particular function, and/or for one or more requirements within particular reliability standard(s), both the JRO and such member(s) or related entity(ies) shall register as an organization responsible for that function. The JRO and its member(s) or related entity(ies) must have a written agreement that clearly specifies their respective responsibilities, which shall be submitted as part of the joint registration.”).

<sup>7</sup> Registration based upon third party written agreements will be determined on a case by case basis.

143. In response to MISO, we did not intend to be prescriptive in assigning tasks to specific entities. The intent was to allow flexibility in identifying the actual user, owner or operator of the Bulk-Power System that would be responsible for complying with the requirements in the NERC Reliability Standards. *One approach could be that the RTO, ISO or other pooled resource registers as the transmission operator pursuant to the NERC compliance registry process and, while retaining ultimate responsibility, assigns specific tasks to be performed by what are sometimes known as local control centers or other relevant organizations. Alternatively, the local control center operators could register together with the RTO, ISO or pooled resources as transmission operators clearly delineating their specific responsibilities with regard to the Requirements of particular Reliability Standards. Such joint registration must assure that there is no overlap between the decision-making and implementation functions, i.e., that there are not two sets of hands on the wheel. Again, our intent is to ensure that there is neither redundancy nor gap in responsibility for compliance with the Requirements of a Reliability Standard, while allowing entities flexibility to determine how best to accomplish this goal.*

144. Consistent with our above explanation, we agree with NPCC that there is a difference between being assigned to perform a task and being responsible for completing the task. *The organization that registers with NERC to perform a function will be the responsible entity and, while it may delegate the performance of that task to another, it may not delegate its responsibility for ensuring the task is completed.*

145. *Accordingly, the Commission directs that the ERO, in registering RTOs, ISOs and pooled resource organizations (or, indeed in registering any entity), assure that there is clarity in the assigning responsibility and that there are no gaps or unnecessary redundancies with regard to the entity or entities responsible for compliance with the Requirements of each relevant Reliability Standard.* Accordingly, although the Commission is not requiring NERC to amend the Functional Model, we believe our concerns can be addressed by having the ERO, through its compliance registry process, ensure that each user, owner and operator of the Bulk-Power System is registered for each requirement in the NERC Reliability Standards that relate to transmission owners to assure there are no gaps in coverage of the type discussed here.

### **III. Recommendation**

In all cases, NERC and the Regional Entities will hold the registered entity accountable for compliance responsibilities and violations thereof. While a registered entity may delegate the performance of a task to another entity, it may not delegate its responsibility for ensuring the task is completed. For these reasons, NERC and the Regional Entities seek to reiterate that:

1. A registered entity has compliance responsibility for NERC Reliability Standard requirements applicable to the function(s) for which it is registered and is accountable for violations thereof.
  - a. An entity that might otherwise qualify to be a registered entity could arrange for or contract with a third party to assume compliance obligations and/or accountability for violations on its behalf and such third party be registered with NERC. In such a case, the third party registered entity would be responsible and accountable for compliance and violations to NERC and Regional Entities. To reiterate, in all events, the registered entity will be responsible for compliance with NERC Reliability Standards and accountable for violations thereof.
2. If a registered entity delegates tasks to a non-registered third party entity, the registered entity remains solely responsible for compliance and is accountable for violations, even with respect to tasks performed by the non-registered third party on its behalf.
  - a. If an entity is not registered with NERC, this non-registered entity would not have “responsibility” as a registered entity (*i.e.*, could not be issued a penalty by the Regional Entity or NERC), but the non-registered entity could have contractual responsibility to the registered entity.
  - b. That is, a registered entity may arrange for or contract with a third party to perform compliance responsibilities and to be liable for violations thereof but such third entity would not be registered with NERC. Therefore, the non-registered entity might be obligated under its contract to reimburse the registered entity for any NERC penalties assessed against the registered entity but would not be held directly liable by NERC or Regional Entities for compliance or penalties. To be clear, in all events, the registered entity will be responsible for compliance with NERC Reliability Standards and accountable for violations thereof.
3. As a result, the registered entity must put mechanisms in place that allow it to:
  - a. Ensure that non-registered entities performing reliability tasks on its behalf comply with the applicable NERC Reliability Standard requirements;
  - b. Ensure that non-registered entities provide evidence of such compliance, at a minimum, upon request to the registered entity or Compliance Enforcement Authority. This may arise with respect to, but is not limited to, audits, compliance investigations, or other compliance monitoring activities and could include on-site visits to the non-registered entity locations; and

- c. Provide self-certifications, self-reports, or other information to the Compliance Enforcement Authority, as required by the CMEP, regarding tasks performed by non-registered entities.
4. The registered entity should ensure that NERC and Regional Entities are aware of any registrations that involve a third party entity performing reliability tasks on its behalf.

A copy of this guidance should be provided as part of the initial Notice of Registration materials sent to a registered entity, as well as any entities that are identified as performing reliability tasks and any known third party entities that perform reliability tasks on the registered entity’s behalf.

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