

## Meeting Agenda Board of Trustees Compliance Committee

May 5, 2009 | 10:30 AM – 12:30 PM

The Westin Arlington Gateway  
801 North Glebe Road  
Arlington, Virginia  
(703) 717-6200

### Welcome and Determination of Quorum

### NERC Antitrust Guidelines

1. Overview of Meeting Objectives and Process
2. Consent Agenda: Action- Approve
  - a. Minutes of February 9, 2009 Meeting (**Item 2.a**)
  - b. Future Meetings (**Item 2.b**)
3. Overall Status of FERC Enforceable Alleged Violations and Violation Mitigation Plans (**Item 3**)
4. Current Status of Post-June 18 Alleged Violations of Reliability Standards
  - a. Violation Process States Flowchart and Summary Table —Enforceable Violations
    - i. January 2009 (**Item 4.a.i**)
    - ii. February 2009 (**Item 4.a.ii**)
    - iii. March 2009 (**Item 4.a.iii**)
  - b. Summary Table of All Post-June 18 Alleged Violations (**Item 4.b**)
5. Current Status of Mitigation of Violations of Reliability Standards
  - a. Mitigation Process States Flowchart (**Item 5.a**)
  - b. Mitigation Process State Table —Enforceable Alleged Violations (**Item 5.b**)
  - c. Pre-June 18 Violation Mitigation Progress Summary (**Item 5.c**)
6. Top FERC Enforceable Violated Standards (rolling 12-months) (**Item 6**)
7. PRC-005-1 Violations
  - a. Rolling 12-Month PRC-005 Violations by Requirement (**Item 7.a**)

- b. Rolling 12-Month PRC-005 Violations by Region (**Item 7.b**)
  - c. Rolling 12-Month PRC-005 Violations by Discovery Method (**Item 7.c**)
- 8. Regional Outstanding Issues Report Summary (**Item 8**)
- 9. Short Form Settlement Process (**Item 9**)
- 10. May 2008 Mandate Items
  - a. Compliance Committee Work Plan (**Item 10**)
- 11. Other Matters

## 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.

# Meeting Minutes

## Board of Trustees Compliance Committee

February 9, 2009  
Phoenix, AZ

### **Welcome and Determination of Quorum**

The duly noticed meeting of the Board of Trustees Compliance Committee was called to order at 3:40 p.m. and a quorum was declared.

### **NERC Antitrust Guidelines**

Chairman Barber called attention to the NERC Antitrust Guidelines.

### **Consent Agenda**

A motion was made and the consent agenda was unanimously approved.

### **Violation Process States Flowchart and Summary Table — Enforceable Violations**

David Hilt presented the current status of Post-June 18 alleged violations of NERC Reliability Standards, including a violation process states flowchart and summary table. Mr. Hilt noted that the percentage of non-documentation related violations has increased relative to other violations possibly indicating Registered Entities are getting their documentation in order. Mr. Hilt noted that about 75 percent of the violations reported to date are self-reported or self-certified by the Registered Entity itself.

### **Top FERC Enforceable Violated Standards (Rolling 12-Months)**

It was suggested that the 12-month average top FERC enforceable violation summary be presented to expand on the information including noting the number document related and non-documentation related and consider displaying the violations by VRF and by VSL.

### **Mitigation Process States Flowchart**

David Hilt reviewed the slides on mitigation plans. He noted that a key takeaway from these slides is that many violations have been mitigated and the reliability risk eliminated. He also noted a recent FERC order requiring the Regional Entities to review and approve or reject a mitigation plan within 30 days.

### **Mitigation Process States Table — Enforceable Alleged Violations**

David Hilt reviewed the data behind the mitigation process states table.

### **Pre-June 18 Violation Mitigation Progress Summary**

David Hilt presented the summary of progress on pre-June 18 violations. He noted that there has been significant progress in completion of pre-June 18 mitigation plans.

### **Regional Outstanding Issues Report Summary**

David Hilt presented the Regional Outstanding Issues Report Summary. He noted that the numbers are showing improvement. Rick Sergel discussed NERC's objective of identifying the 12 most important violations, which is to begin later in the year.

### **May 2008 Mandate Items**

Committee Chairman Paul Barber explained that the written comments on the issue of making public the Penalty Tool and committee's discussion to date has not led to a uniform direction. He suggested that it would be best to wait for more output from the program before advancing the discussion on public release of the Penalty Tool. The committee agreed with the suggestion to put further discussion of the Penalty Tool on hold.

Committee members also discussed addressing Issue 1.E mandate question (focusing attention on more serious violations) either as a stand alone issue or as part of the family of questions associated with targeting compliance audits.

MRC member William Gallagher suggested that Issue 2.B (measuring results of the compliance program) should be addressed. Chairman Barber indicated that actions are already underway on this front.

MRC chairman, Steven Naumann, asked about the status of a short-form settlement agreement. NERC CEO, Rick Sergel, reported that NERC was preparing a short-form settlement agreement that should reduce the burden of dealing with violations that were minor or of an administrative nature.

Chairman Barber concluded the discussion on the mandate issues by asking staff to work on Issue 1.E plus any other issues from category II that can be accommodated. He also asked staff to update the work plan and timeline.

### **Other Matters**

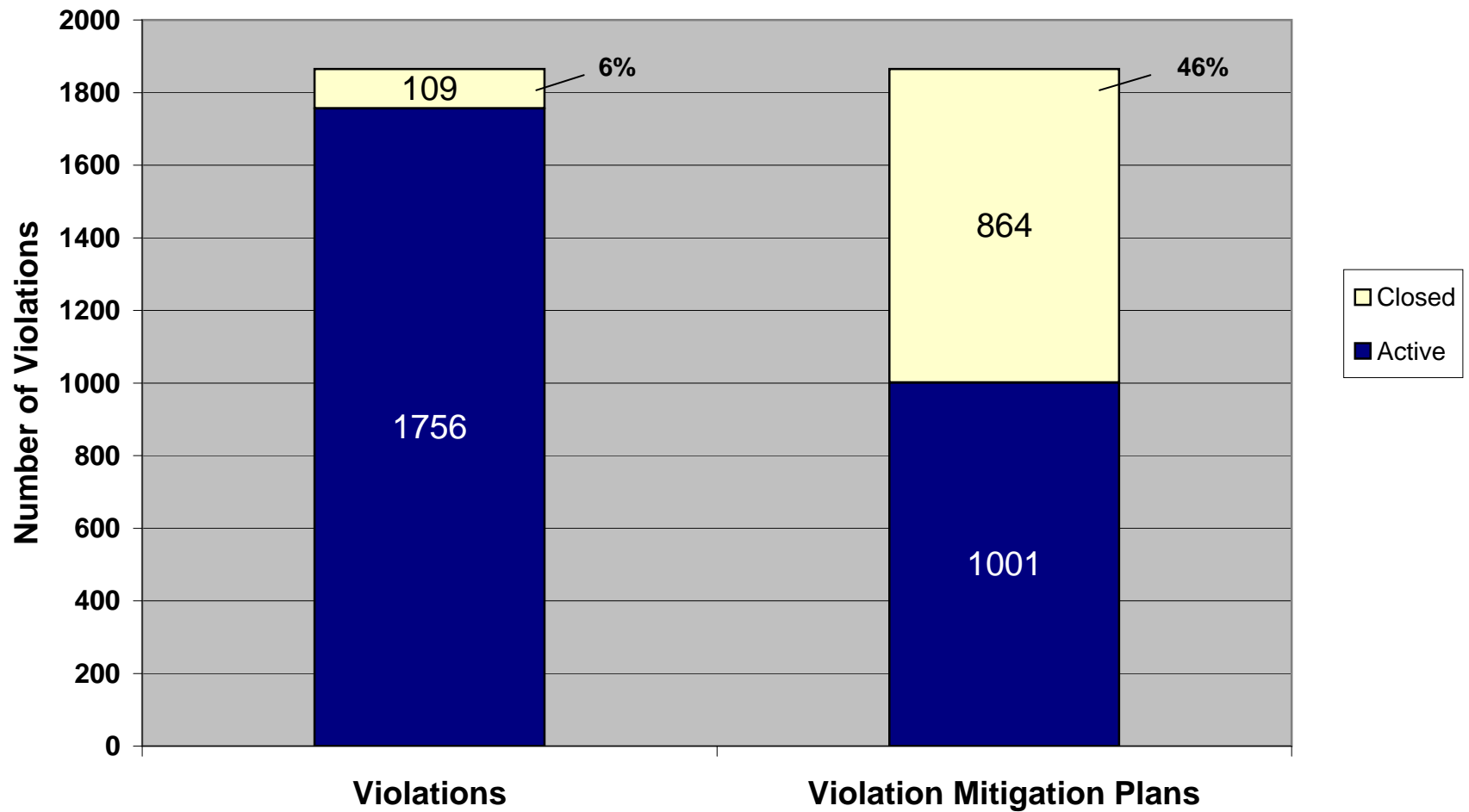
Chairman Barber adjourned the meeting at 5:10 p.m.

## Board of Trustees Compliance Committee

### 2009 Meeting Dates

Open Meetings		Closed Meetings		Closed-Closed Meetings	
		January 9	10 a.m.–noon	January 9	1–3 p.m.
February 9	Scottsdale/Phoenix, AZ	February 17	10 a.m.–noon	February 8	3 p.m.
		March 10	10 a.m.–noon	March 11	10 a.m.-noon
		April 10	10 a.m.–noon	April 10	1–3 p.m.
May 5	Washington, D.C.	May 11	10 a.m.–noon	May 4	1–3 p.m.
		June 10	10 a.m.–noon	June 10	1–3 p.m.
		July 10	10 a.m.–noon	July 10	1–3 p.m.
August 4	Winnipeg, Manitoba	August 10	10 a.m.–noon	August 10	1–3 p.m.
		September 11	10 a.m.–noon	September 11	1–3 p.m.
		October 12	10 a.m.–noon	October 12	1–3 p.m.
November 4	Atlanta, GA	November 9	10 a.m.–noon	November 9	1–3 p.m.
		December 9	10 a.m.–noon	December 9	1–3 p.m.

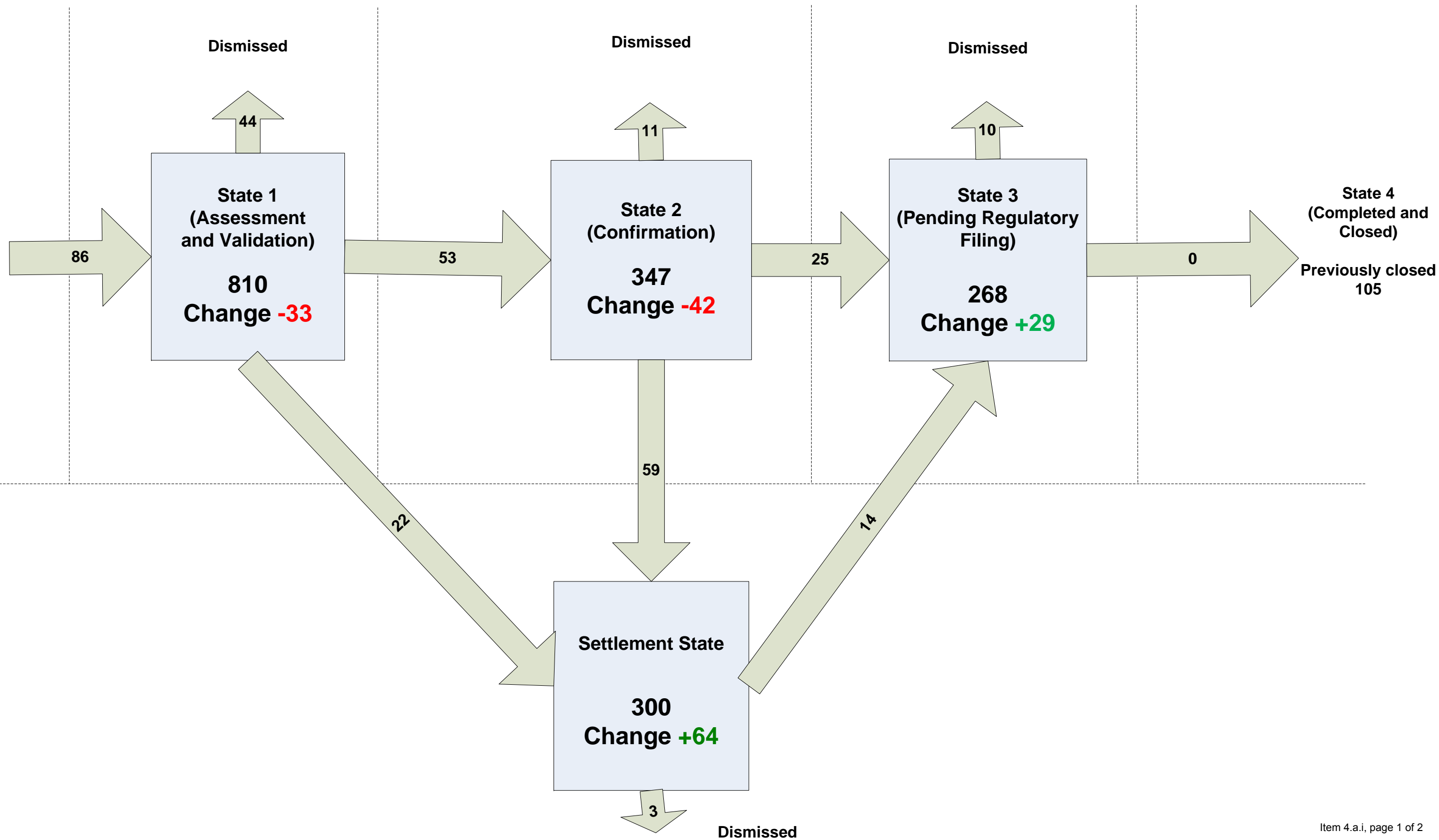
### Status of FERC Enforceable Alleged Violation and Violation Mitigation Plans as of March 31, 2009





# Violation Process States

Snapshot comparison between January 1, 2009 and January 31, 2009



**Pending Violations Summary by Process Steps**  
**FERC Enforceable Alleged Violations Summarized by State**

Below is a breakdown, as of January 31, 2009, of the Compliance Monitoring and Enforcement Program (CMEP) Violation Process Steps summarized by State for the 1725 active violations.

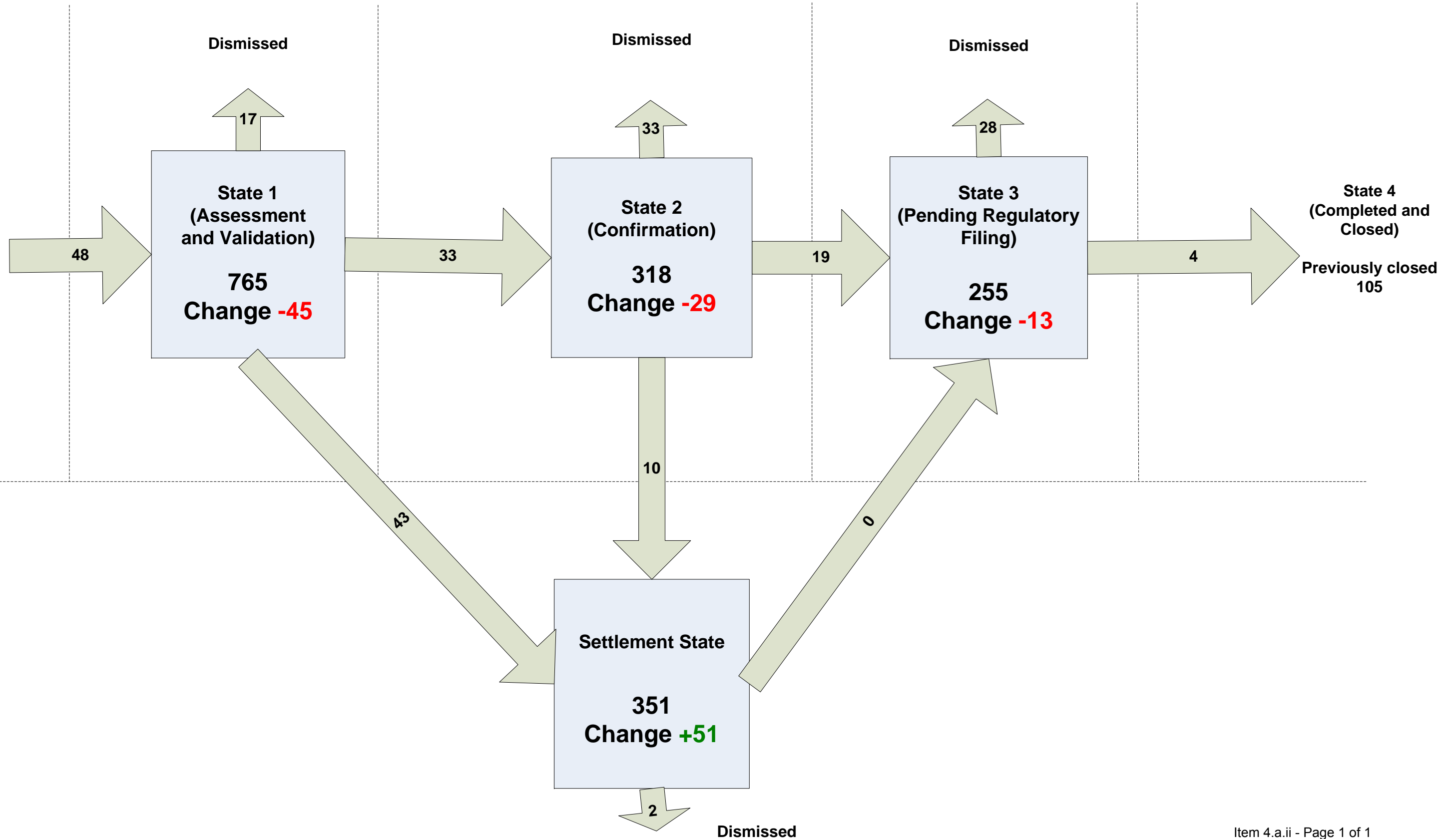
	<b>STATE 1</b>	<b>STATE 2</b>		<b>STATE 3</b>	<b>STATE 4</b>		
	<b>Assessment and Validation</b>	<b>Confirmation</b>	<b>Settlement Negotiations</b>	<b>Pending Regulatory Filing</b>	<b>Completed and Closed (Previous 12 Months)</b>		
<b>Region</b>						<b>Total Active</b>	<b>%Closed to Total</b>
<b>FRCC</b>	<b>59</b>	<b>30</b>	<b>13</b>	<b>27</b>	<b>0</b>	<b>129</b>	<b>0%</b>
<b>MRO</b>	<b>7</b>	<b>3</b>	<b>5</b>	<b>33</b>	<b>7</b>	<b>48</b>	<b>13%</b>
<b>NPCC</b>	<b>1</b>	<b>0</b>	<b>20</b>	<b>17</b>	<b>12</b>	<b>38</b>	<b>24%</b>
<b>RFC</b>	<b>43</b>	<b>4</b>	<b>46</b>	<b>14</b>	<b>1</b>	<b>107</b>	<b>1%</b>
<b>SERC</b>	<b>65</b>	<b>1</b>	<b>48</b>	<b>41</b>	<b>70</b>	<b>155</b>	<b>31%</b>
<b>SPP</b>	<b>10</b>	<b>43</b>	<b>1</b>	<b>4</b>	<b>5</b>	<b>58</b>	<b>8%</b>
<b>TRE</b>	<b>20</b>	<b>0</b>	<b>13</b>	<b>22</b>	<b>10</b>	<b>55</b>	<b>15%</b>
<b>WECC</b>	<b>605</b>	<b>266</b>	<b>154</b>	<b>110</b>	<b>0</b>	<b>1135</b>	<b>0%</b>
<b>TOTAL</b>	<b>810</b>	<b>347</b>	<b>300</b>	<b>268</b>	<b>105</b>	<b>1725</b>	<b>6%</b>

- Includes new violations received through 1/31/2009.

Report Date: January 31, 2009

# Violation Process States

Snapshot comparison between February 1, 2009 and February 28, 2009



**Pending Violations Summary by Process Steps**  
**FERC Enforceable Alleged Violations Summarized by State**

Below is a breakdown, as of February 28, 2009, of the Compliance Monitoring and Enforcement Program (CMEP) Violation Process Steps summarized by State for the 1689 active violations.

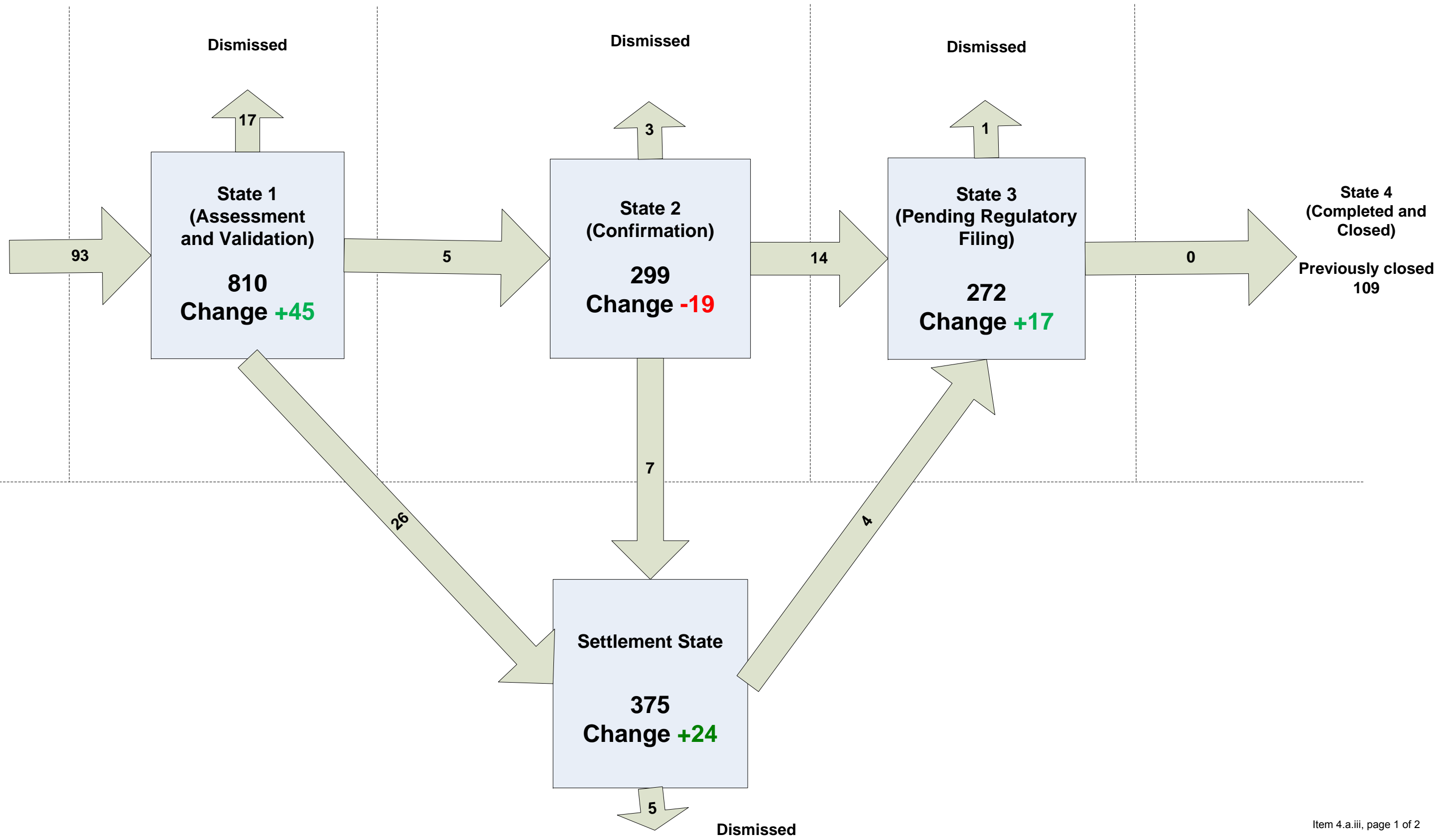
	STATE 1	STATE 2		STATE 3	STATE 4		
	Assessment and Validation	Confirmation	Settlement Negotiations	Pending Regulatory Filing	Completed and Closed (Previous 12 Months)		
Region						Total Active	%Closed to Total
<b>FRCC</b>	<b>54</b>	<b>27</b>	<b>25</b>	<b>31</b>	<b>0</b>	<b>137</b>	<b>0%</b>
<b>MRO</b>	<b>11</b>	<b>4</b>	<b>5</b>	<b>36</b>	<b>7</b>	<b>56</b>	<b>11%</b>
<b>NPCC</b>	<b>2</b>	<b>0</b>	<b>20</b>	<b>17</b>	<b>12</b>	<b>39</b>	<b>24%</b>
<b>RFC</b>	<b>45</b>	<b>2</b>	<b>46</b>	<b>16</b>	<b>1</b>	<b>109</b>	<b>1%</b>
<b>SERC</b>	<b>47</b>	<b>1</b>	<b>65</b>	<b>37</b>	<b>74</b>	<b>150</b>	<b>33%</b>
<b>SPP</b>	<b>13</b>	<b>31</b>	<b>10</b>	<b>14</b>	<b>5</b>	<b>68</b>	<b>7%</b>
<b>TRE</b>	<b>19</b>	<b>0</b>	<b>14</b>	<b>22</b>	<b>10</b>	<b>55</b>	<b>15%</b>
<b>WECC</b>	<b>574</b>	<b>253</b>	<b>166</b>	<b>82</b>	<b>0</b>	<b>1075</b>	<b>0%</b>
<b>TOTAL</b>	<b>765</b>	<b>318</b>	<b>351</b>	<b>255</b>	<b>109</b>	<b>1689</b>	<b>6%</b>

- Includes new violations received through 2/28/2009.

Report Date: February 28, 2009

# Violation Process States

Snapshot comparison between March 1, 2009 and March 31, 2009



**Pending Violations Summary by Process Steps  
FERC Enforceable Alleged Violations Summarized by State**

Below is a breakdown, as of March 31, 2009, of the Compliance Monitoring and Enforcement Program (CMEP) Violation Process Steps summarized by State for the 1756 FERC enforceable violations.

	STATE 1	STATE 2		STATE 3	STATE 4		
	Assessment and Validation	Confirmation	Settlement Negotiations	Pending Regulatory Filing	Completed and Closed (Previous 12 Months)		
Region						Total Active	% Closed to Total
<b>FRCC</b>	72	20	29	35	0	156	0%
<b>MRO</b>	12	2	6	38	7	58	11%
<b>NPCC</b>	17	2	10	17	12	46	21%
<b>RFC</b>	46	2	51	16	1	115	1%
<b>SERC</b>	29	1	79	40	74	149	33%
<b>SPP</b>	15	31	10	14	5	70	7%
<b>TRE</b>	18	0	13	23	10	54	16%
<b>WECC</b>	601	241	177	89	0	1108	0%
<b>TOTAL</b>	810	299	375	272	109	1756	6%

\* Includes new violations received through 3/31/2009.

Report Date: 4/2/2009

### Summary of all Post June 18<sup>th</sup> Alleged Violations by Region

Below is a breakdown, as of March 31, 2009 of the Compliance Monitoring and Enforcement (CMEP) alleged violation summary for all 2612 violations.

	Dismissed	Previously Closed	Newly Closed	FERC Enforceable			Total Canadian Violations	Total	Percentage Entities with no Violations
				Total	Normalized by Registered Entity	% Non-Document Related			
FRCC	5	0	0	156	2.23	53%	0	161	57%
MRO	16	7	0	58	0.50	31%	7	88	77%
NPCC	9	12	0	46	0.17	33%	3	70	89%
RFC	16	1	0	115	0.32	65%	0	132	85%
SERC	41	74	0	149	0.66	46%	0	264	65%
SPP	1	5	0	70	0.61	71%	0	76	82%
TRE	4	10	0	54	0.25	63%	0	68	92%
WECC	643	0	0	1108	2.34	52%	2	1753	58%
<b>TOTAL</b>	<b>735</b>	<b>109</b>	<b>0</b>	<b>1756</b>	<b>0.95</b>	<b>52%</b>	<b>12</b>	<b>2612</b>	<b>75%</b>

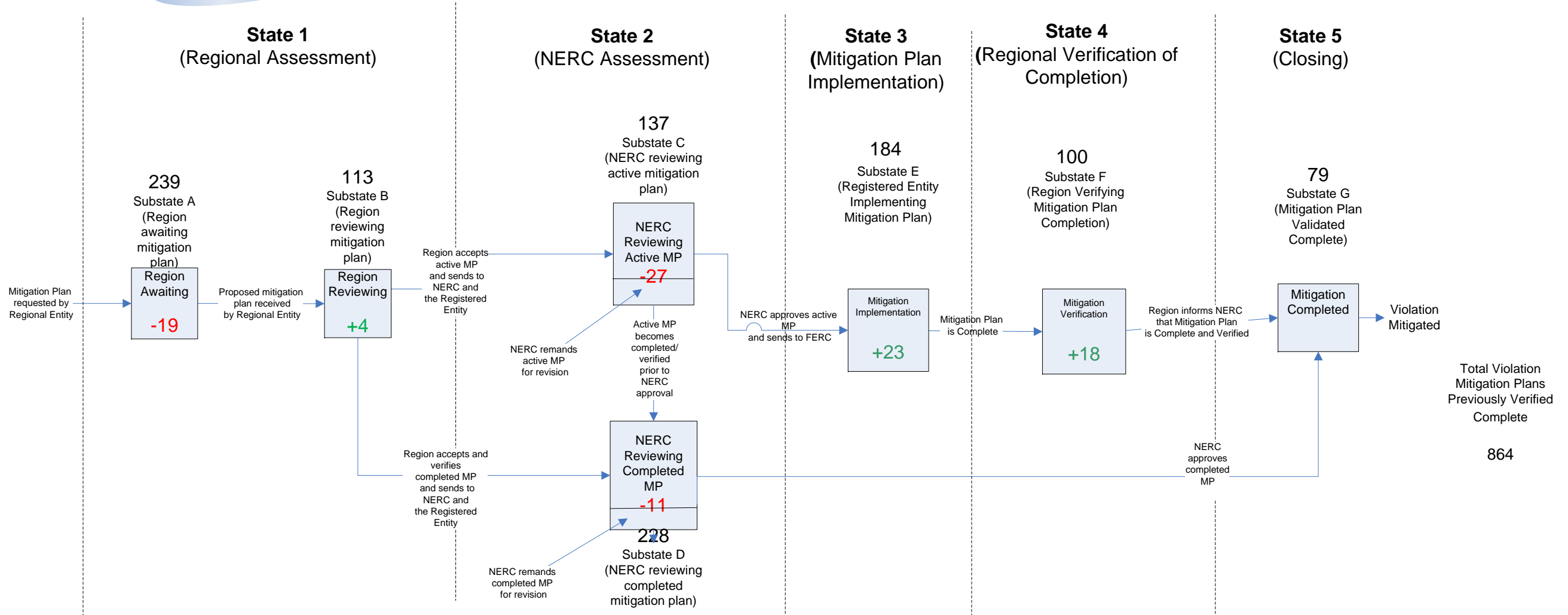
---

Includes new violations received through 3/31/2009.

Report Date: 4/2/2009

# Mitigation Process States and Underlying Process Substates

Snapshot comparison between March 1, 2009 and March 31, 2009





**Mitigation Plans Process State Table – Active FERC Enforceable Alleged Violations  
FERC Enforceable Alleged Violations Summarized by State**

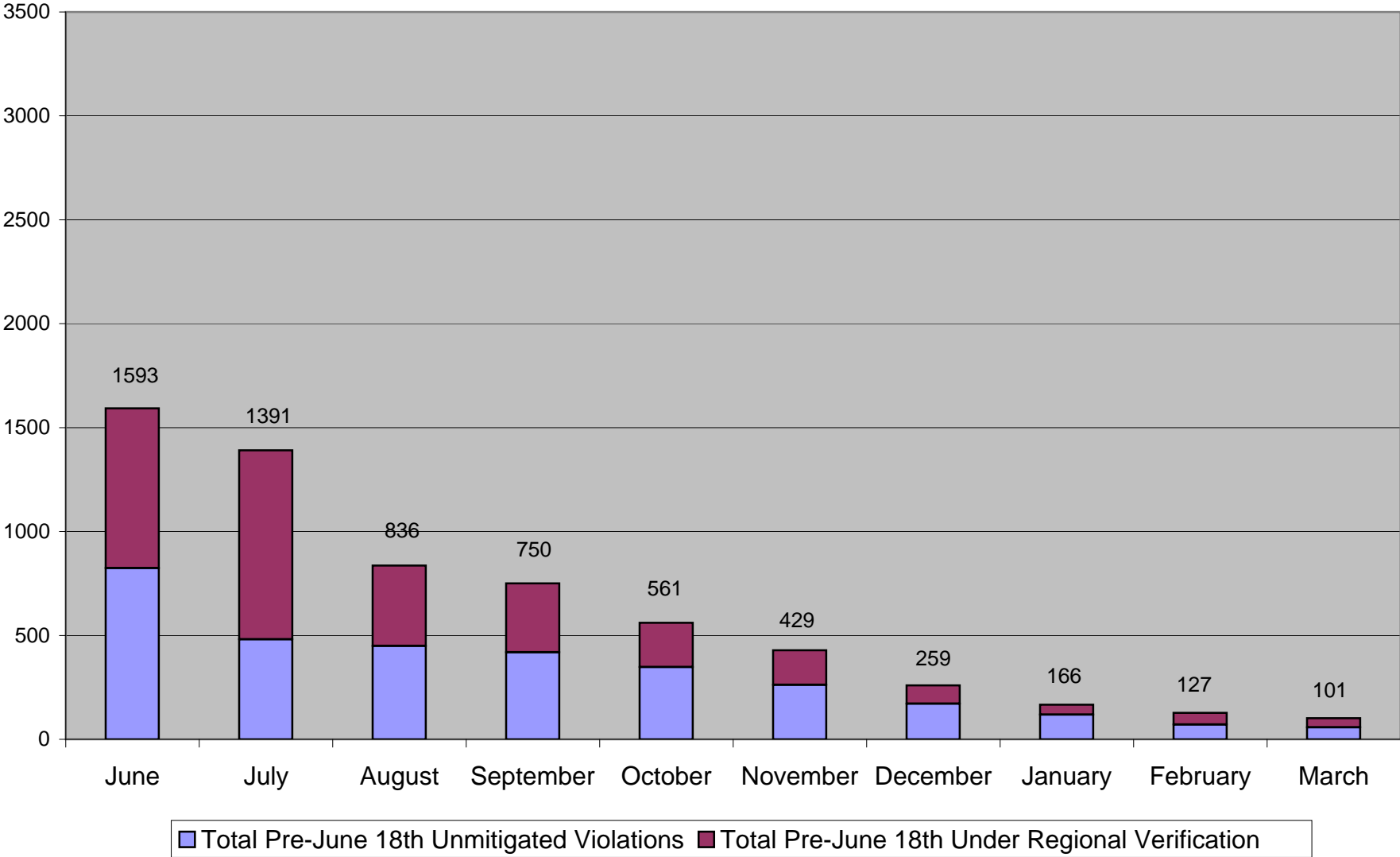
Below is a breakdown, as of March 31, 2009, of the Compliance Monitoring and Enforcement Program (CMEP) Mitigation Plan “state” summary for the 1080 active violations.

	<b>STATE 1</b>	<b>STATE 2</b>	<b>STATE 3</b>	<b>STATE 4</b>	<b>STATE 5</b>	
	<b>Regional Assessment</b>	<b>NERC Assessment</b>	<b>Mitigation Plan Implementation</b>	<b>Regional Verification of Completion</b>	<b>Closing</b>	
<b>Region</b>						<b>Total</b>
<b>FRCC</b>	<b>18</b>	<b>23</b>	<b>32</b>	<b>18</b>	<b>15</b>	<b>106</b>
<b>MRO</b>	<b>12</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>17</b>
<b>NPCC</b>	<b>19</b>	<b>14</b>	<b>0</b>	<b>3</b>	<b>4</b>	<b>40</b>
<b>RFC</b>	<b>33</b>	<b>6</b>	<b>9</b>	<b>43</b>	<b>0</b>	<b>91</b>
<b>SERC</b>	<b>29</b>	<b>12</b>	<b>9</b>	<b>11</b>	<b>14</b>	<b>75</b>
<b>SPP</b>	<b>13</b>	<b>0</b>	<b>31</b>	<b>0</b>	<b>0</b>	<b>44</b>
<b>TRE</b>	<b>30</b>	<b>2</b>	<b>5</b>	<b>0</b>	<b>2</b>	<b>39</b>
<b>WECC</b>	<b>198</b>	<b>303</b>	<b>98</b>	<b>25</b>	<b>44</b>	<b>668</b>
<b>TOTAL</b>	<b>352</b>	<b>365</b>	<b>184</b>	<b>100</b>	<b>79</b>	<b>1080</b>

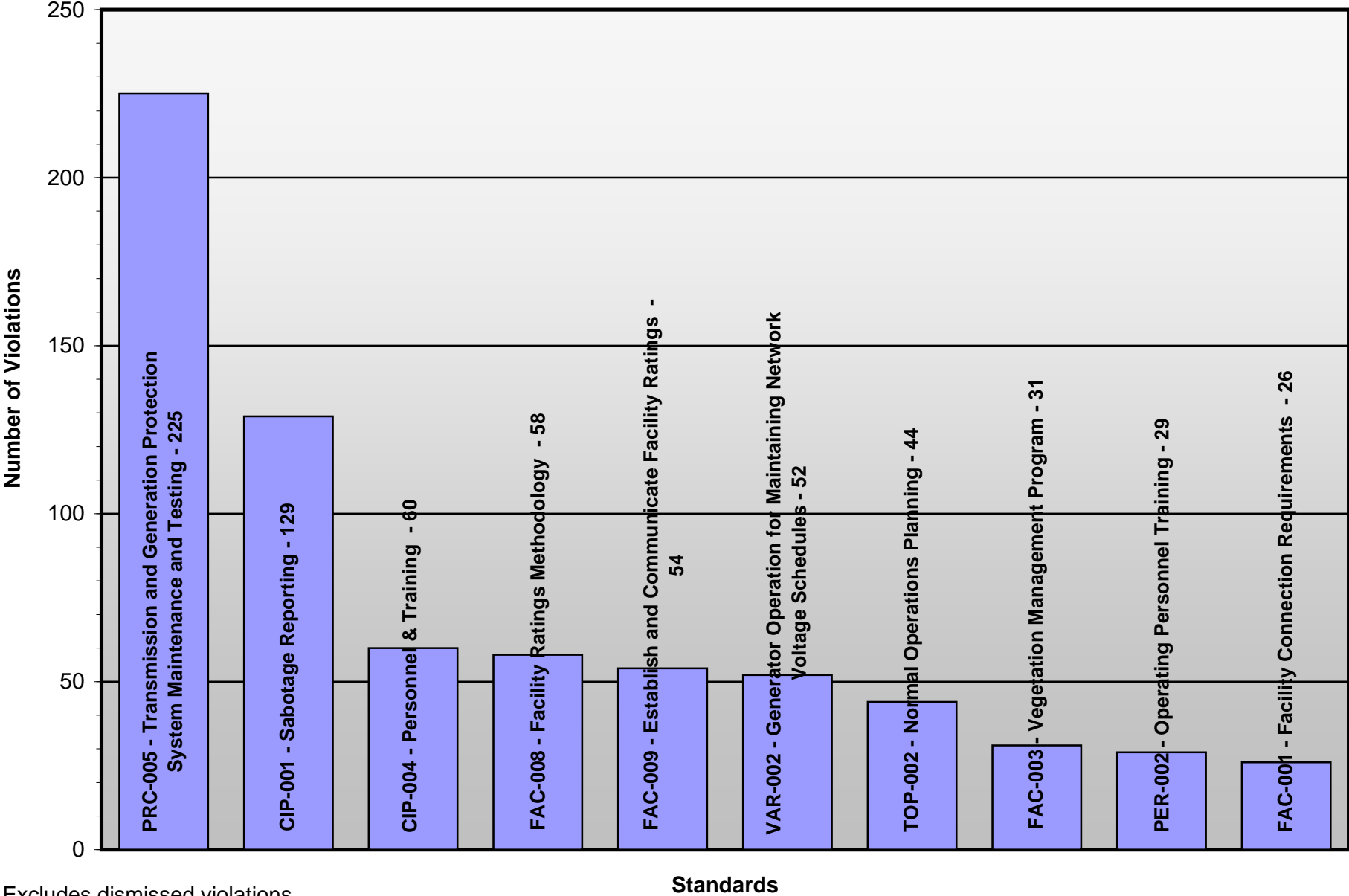
- Includes mitigation plans received through 3/31/2009.

Report Date: April 2, 2009

### Progress with Pre-June 18th Violation Mitigation Plans



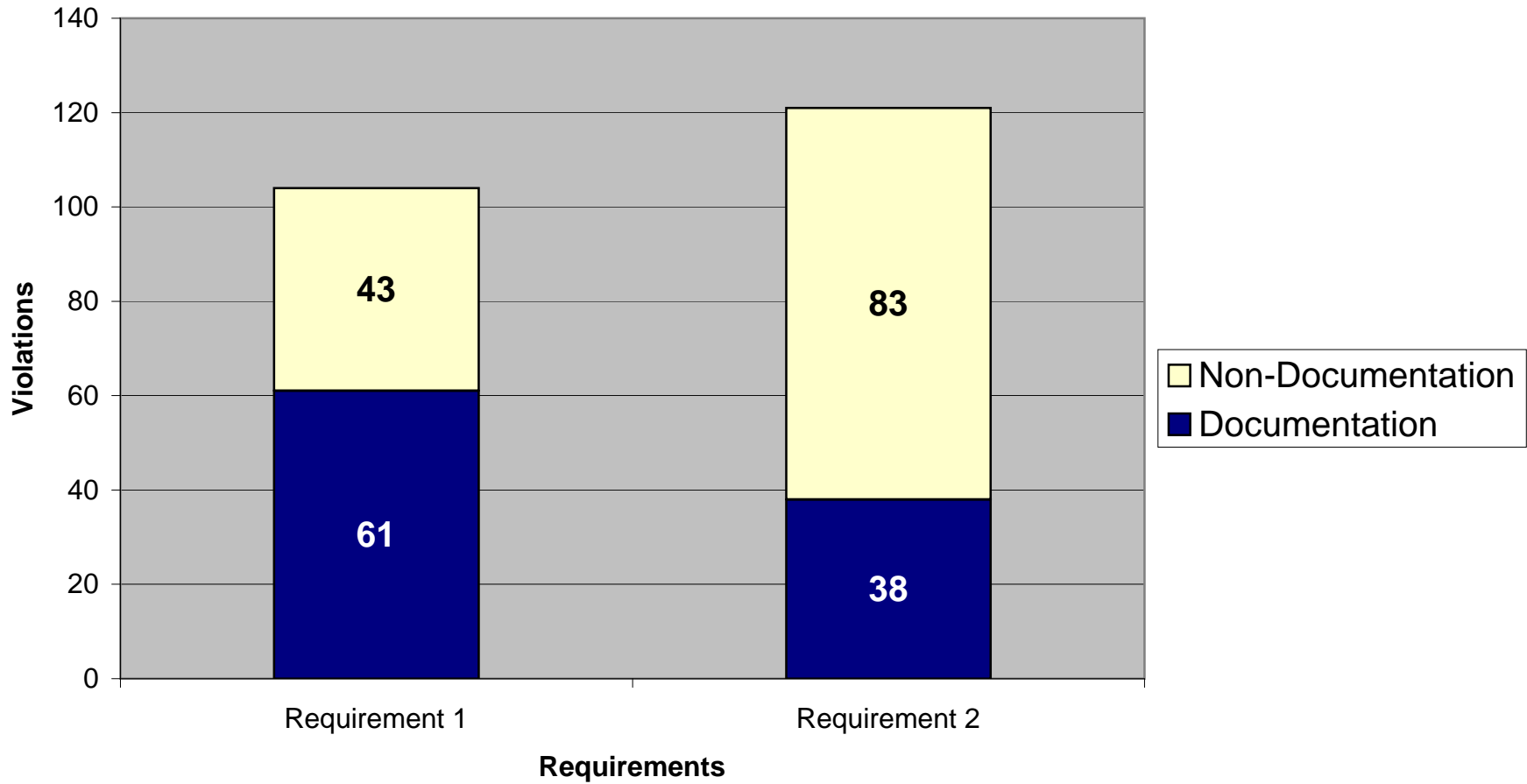
**Top 10 FERC Enforceable Standards  
(Submit Dates: 4/1/2008 thru 3/31/2009)**



Excludes dismissed violations.

Report Date: 4/3/2009

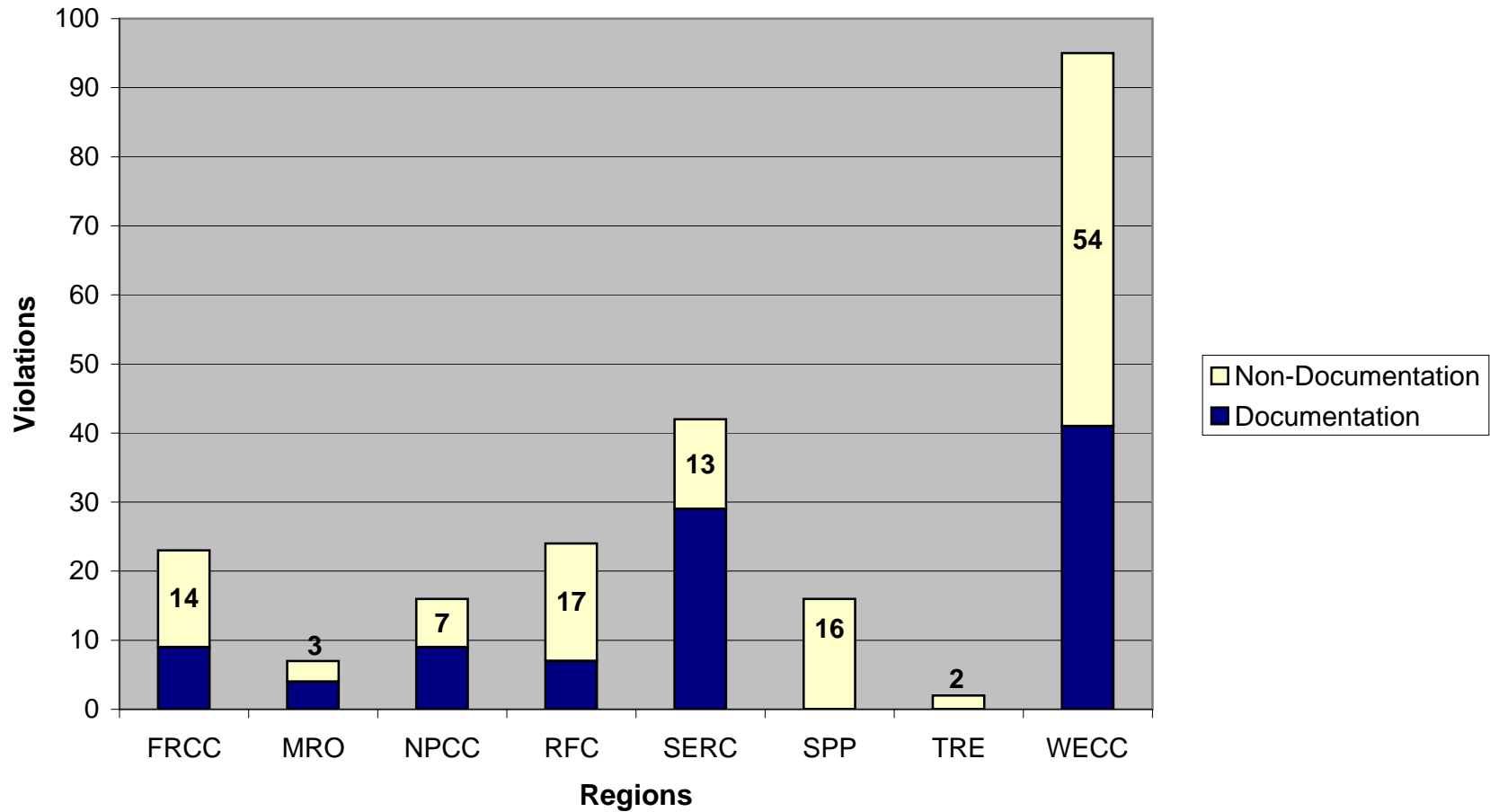
### Rolling 12-Month PRC-005 Violations By Requirement



Report Date: 4/16/2009

**Total Requirement 1 Violations: 104**  
**Total Requirement 2 Violations: 121**

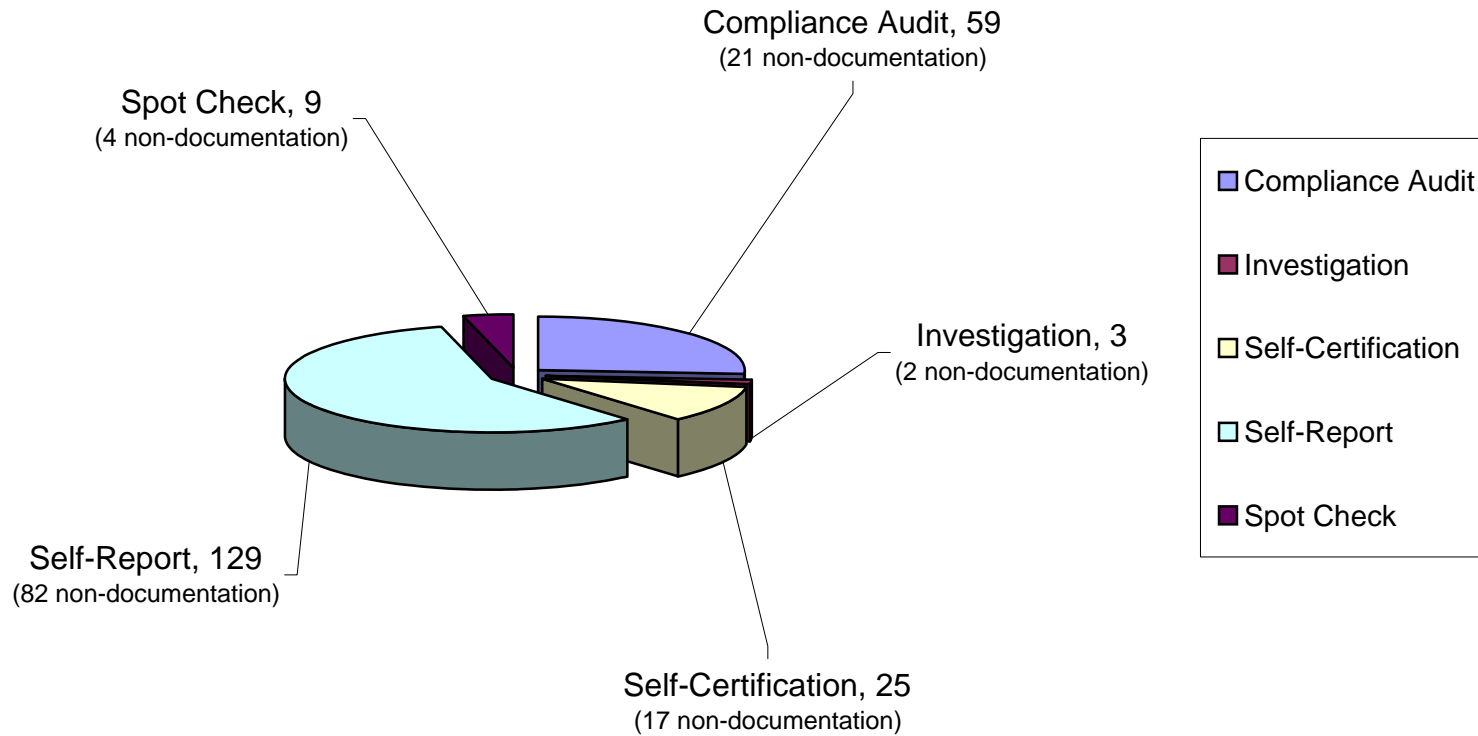
### Rolling 12-Month PRC-005 Violations By Region Documentation and Non-Documentation



Report Date: 4/16/2009

Total Documentation: 99  
Total Non-Documentation: 126

## Rolling 12- Month PRC-005 Violations By Discovery Method



Report date: 4/16/2009

**Total Violations: 225**

# Regional Outstanding Issues Summary Report

April 6, 2009

**Table 1: Number of Alleged Violations without NAVAPS Received<sup>1</sup>**

Region	< 50 days	50–100 days	101–200 days	201–300 days	> 301 days
FRCC	25	10	21	2	10
MRO	11			1	
NPCC					
RFC	7	14	20	5	
SERC	6	2	1	17	3
SPP	2	10	3		
TRE			18		
WECC	59	56	172	123	191

**Table 2: Mitigation Plan Accepted by Region but not received by NERC**

Region	< 50 days	50–100 days	101–200 days	201–300 days	> 301 days
NPCC	1				
SERC	2				
WECC	1				

**Table 3: Confirmed violations where the region has not received a mitigation plan**

Region	< 50 days	50–100 days	101–200 days	201–300 days	> 301 days
WECC	1	1	13		

**Table 4: Confirmed violations (NAVAPS accepted) where the region has not provided a NOCV to NERC**

Region	< 50 days	50–100 days	101–200 days	201–300 days	> 301 days
FRCC	18				
MRO	2				
NPCC					
SERC			1		
SPP		1		30	
WECC	19	52	141	12	

<sup>1</sup> Excludes alleged violations that have entered into settlement negotiations.

## NERC Compliance Process Bulletin #2009-EM-XXX Short Form Settlement Process

### Version 1.0

May 5, 2009 | **Public Process Announcement**

The purpose of this Compliance Process Bulletin is to provide guidance concerning the applicability and implementation of the short form settlement process.

### BACKGROUND

NERC, in conjunction with the Regional Entities, established a short form settlement process to improve efficiency of the enforcement of the Reliability Standards. This short form settlement process is expected to reduce administrative burdens in processing violations where the risk to reliability is limited. This process should limit the resources needed to close out such violations and expedite the overall time for review. The process is also expected to be an additional tool for the REs to use in processing the violations.

The short form settlement process is structured to work within the current requirements of the NERC Compliance Monitoring and Enforcement Program (“CMEP”) and the Rules of Procedure. To facilitate efficiency, the process identifies a set of Reliability Standard requirements for which violations can be settled on a limited record, given the requirements’ relatively limited risk to bulk power system reliability and ease of mitigation. While the short form settlement process will improve efficiency in resolving certain violations, there remains a need for this process: (1) to develop a sufficient record to support the settlement of each violation for approval by the Regional Entities, NERC and ultimately by FERC; and (2) to determine and assess penalties that are consistently applied across each Region and consistent with the Sanctions Guidelines. To facilitate successful implementation of the short form settlement process, this Compliance Process Bulletin outlines a framework for each Regional Entity to follow in pursuing short form settlements with its registered entities.

### APPLICABILITY

It is important to define explicitly and objectively the scope of Reliability Standard violations for which Regional Entities may pursue short form settlements. If the scope of Reliability Standard violations is unclear or if the process allows too much discretion as to the applicability of the short form settlement process, the prospects for protracted litigation over those points may



undermine the purpose and expected efficiency gains of the short form process. This Compliance Process Bulletin defines the applicability of the short form settlement process in a number of critical ways.

First, attached as Appendix A is a list of the specific Reliability Standard violations for which the short form settlement process applies. This list reflects a subset of the Requirements in the Reliability Standards that have been assigned “Lower” or “Medium” Violation Risk Factors (“VRFs”). Of these Lower or Medium VRF requirements, the list was further narrowed to include only documentation related violations -- *i.e.*, requirements for which the entity is performing the task(s) or responsibilities identified by the requirement and mitigation of any violation would entail the production of: (1) records, (2) a revised document to address the requirements of the Reliability Standard, or (3) the document on a schedule. Performance issues, including those where the existence of a plan or process is the basis of the requirement, are excluded because the failure to perform will have varying degrees of impact on bulk power system reliability.<sup>1</sup> Of those documentary requirements, the list was further restricted to exclude requirements of unique importance or for which there has not been sufficient experience to apply a short form settlement process.<sup>2</sup> In short, the list in Appendix A confines the scope of the short form settlement process to violations of a subset of documentary requirements of Reliability Standards that have been assigned Lower or Medium VRFs.

Second, the short form settlement process will apply only to violations identified in self-reports and self-certifications. This is intended to encourage self reporting. In addition, because the administrative burden and resources in processing self-reported violations are more limited than processing violations discovered through other processes, this restriction is consistent with the efficiency goals of the short form settlement process

Third, the short form settlement process will not be available for repeat violations or in situations where there is a pervasive lack of documentation. In keeping with the NERC Sanction Guidelines, this restriction would also exclude violations where the registered entity had previously committed similar or related violations on similar topics. The scope of this restriction will need to be determined by each Regional Entity in the context of specific cases, but the guiding tenet is that the short form settlement is not appropriate in cases where a fuller consideration of a registered entity’s compliance culture is required.

Finally, although this Compliance Process Bulletin provides clear guidance as to the applicability of the short form settlement and the template to use for drafting the settlement, use of the short form settlement process is not mandatory, and Regional Entities, in consultation with NERC staff, should use discretion to determine whether to use more traditional enforcement processes for certain cases that may otherwise qualify for short form settlement process.

---

<sup>1</sup> Some non-documentary requirements were also excluded because the settlement of violations of such requirements would entail an assessment of a registered entity’s performance, which would likely require more record support than the short form settlement process would allow. For example, settlement of violations of performance-oriented standards would likely require an evaluation of performance prior to and after mitigation, duration of the violation, *etc.*

<sup>2</sup> Examples of these excluded documentary requirements include Requirement R2 of PRC-005 and the various documentary requirements under CIP-002 to CIP-009.

## SETTLEMENT TERMS

A template for a short form settlement is attached as Appendix B. Regional Entities should use this template without modification. The template contains the provisions to meet the requirements for approval by the Regional Entities, NERC and ultimately FERC. The template provides blanks to be filled in when appropriate case-specific information is required. In this regard, the template will improve efficiency and consistency in the processing of violations covered by this process.

The template also contains important features defining the scope and effect of each short form settlement. First, the template provides for a full and complete settlement of the violations identified in each short form settlement, and that will eliminate the administrative burden of further appellate process with respect to those violations. Second, the template is structured to ensure that NERC and the Regional Entities are not precluded from investigating or pursuing violations other than those resolved under the short form settlement. Finally, the template also provides that NERC and the Regional Entities are not precluded from considering the settled violations in assessing a registered entity's compliance culture in future enforcement actions.

Another important element of the template is the use of the standard Mitigation Plan template and the requirement that the Mitigation Plan needs to be certified as complete by the registered entity and verified as complete by the Regional Entity. Use of the standard Mitigation Plan template ensures that limited record information needed for approval of the settlement is complete and consistently gathered. This will facilitate efficient processing of the short form settlements. Ensuring that the mitigation is complete through a certification by the registered entity and verification by the Regional Entity will minimize the administrative burden of tracking ongoing Mitigation Plan compliance. The requirement that mitigation be complete, of course, should not preclude a Regional Entity from commencing short form settlement discussions with appropriate registered entities while mitigation is still pending; the completion of mitigation would only dictate when such a settlement would move forward for approval.

## PENALTY DETERMINATION

To further facilitate the efficiency of the short form settlement process, this Compliance Process Bulletin also contemplates the use of *pro forma* settlement penalties that would be assessed for violation covered by this process. To satisfy the NERC Sanction Guidelines, these penalty amounts would be determined based on the Base Penalty Amount Table in the Sanction Guidelines. Specifically, they would be determined by taking minimum dollar values listed in the table for each Violation Risk Factor (Lower or Medium) and certain of the Violation Severity Levels (Lower, Moderate, or High)<sup>3</sup> associated with a particular Reliability Standard

---

<sup>3</sup> The "Severe" VSL was excluded from consideration. The "High" VSL was considered only in limited situations where that level reflected only a difference in the duration of a violation or the failure to address one additional element of a requirement in a document. As with consideration of violations with "Lower" or "Moderate" VSLs, violations with "High" VSLs would not be considered if they reflect a complete failure to have required documents (i.e., a performance failure).

requirement and applying an adjustment factor to reflect duration of the violation, recognizing that most violations of documentary standards discovered to date have existed since June 18, 2007 or earlier.

**PROGRAM MODIFICATION AND/OR EXPANSION**

The short form settlement process outlined above was reviewed and developed by NERC staff and Regional Entity staff, and reflects an initial starting point for the implementation of the short form settlement process. As NERC and the Regional Entities gain experience with the program, it is expected that NERC and the Regional Entities will revisit the short form settlement process, its applicability, the template or the *pro forma* penalty determinations, and they will determine whether modifications are required or the applicability of the program should be expanded to cover areas not addressed above. Such modifications would be reflected in future revisions to this Compliance Process Bulletin.

Tim Kucey  
 Manager, Compliance Enforcement and Mitigation  
 609.452.8060  
[tim.kucey@nerc.net](mailto:tim.kucey@nerc.net)

Joel deJesus  
 Director, Regional Operations  
 202.393.3998  
[joel.dejesus@nerc.net](mailto:joel.dejesus@nerc.net)

**Process disclaimer:** NERC reserves the right to issue new process bulletins or modify existing process bulletins when necessary and at its discretion.

**REVISION HISTORY**

Version.	Date	Reviewers	Revision Description
1	April __, 2009	NERC and Regional Entity Staff	Initial Draft

**APPENDIX A**

**REQUIREMENTS SUBJECT TO SHORT FORM SETTLEMENT PROCESS**

Standard	Requirement	VRF	Comment	Applicability		
				Lower VSL	Moderate VSL	High VSL
BAL-002-0	R2.2, R2.3, R2.4, R2.5, R2.6	Medium	Reserve policy document deficiency only	✓	✓	N/A
BAL-003-0a	R1.2	Lower		✓	✓	N/A
BAL-006-1	R5	Lower		✓	✓	N/A
CIP-001-1	R2	Medium		✓	N/A	N/A
EOP-001-0	R6	Medium	Entity addresses all elements but are not included in document	✓	✓	N/A
EOP-004-1	R3.1, R3.4	Lower		✓	✓	✓
EOP-005-1	R1	Medium	Entity has a plan and addresses all elements but not all elements are not included in document	✓	✓	N/A
EOP-008-0	R1.7	Medium		✓	✓	N/A
EOP-009-0	R1, R2	Medium	For R1, blackstart test was performed but not documented	✓	N/A	N/A

				Applicability		
FAC-001-0	R1, R1.1, R1.2, R1.3	Medium	Entity has a plan and addresses all elements but not all elements are not included in document	✓	✓	N/A
FAC-001-0	R2	Medium	Entity addresses all elements but are not included in document	✓	✓	N/A
FAC-001-0	R3	Medium		✓	✓	N/A
FAC-002-0	R2	Lower		✓	✓	✓
FAC-008-1	R1, R1.1, R1.2, and R1.3	Lower	Entity has methodology addresses all elements but are not included in document	✓	✓	N/A
FAC-008-1	R2, R3	Lower		✓	N/A	N/A
FAC-009-1	R2	Lower		✓	N/A	N/A
IRO-001-1	R5	Lower	Delegation agreements must exist for all entities	✓	✓	N/A
IRO-014-1	R1.1	Lower	Entity addresses all elements but are not included in document	✓	✓	N/A
IRO-014-1	R4	Lower	Entity performs all elements but are not included in document	✓	✓	N/A

				Applicability		
MOD-006-0	R1	Lower	Entity addresses all elements but are not included in document	✓	✓	N/A
MOD-006-0	R2	Lower		✓	N/A	N/A
MOD-007-0	R2	Lower		✓	N/A	N/A
PRC-007-0	R3	Lower		✓	✓	N/A
PRC-009-0	R2	Lower		✓	✓	N/A
PRC-010-0	R2	Lower		✓	✓	N/A
PRC-011-0	R2	Lower		✓	✓	N/A
PRC-015-0	R3	Lower		✓	✓	N/A
PRC-016-0	R3	Lower		✓	✓	N/A
PRC-017-0	R2	Lower		✓	✓	N/A
PRC-021-1	R2	Lower		✓	✓	N/A
PRC-022-1	R2	Lower		✓	✓	N/A
TPL-002-0	R3	Lower		N/A	✓	N/A
TPL-003-0	R3	Lower		N/A	✓	N/A
TPL-004-0	R2	Lower		N/A	✓	N/A
VAR-001-1	R3.2	Lower		✓	✓	N/A
VAR-001-1	R11	Lower		✓	N/A	N/A
VAR-002-1a	R4	Lower	Applicable if the violations are solely based on the fact that data was not provided within the deadlines, but was provided later	✓	✓	✓

**APPENDIX B**

**SHORT FORM SETTLEMENT TEMPLATE**

DRAFT

---

---

**SHORT FORM SETTLEMENT AGREEMENT  
OF  
[REGIONAL ENTITY]  
AND  
[REGISTERED ENTITY]**

**I. Introduction**

1. [REGIONAL ENTITY] and [REGISTERED ENTITY] (the “Settling Parties”) enter into this Short Form Settlement Agreement (the “Settlement Agreement”) to resolve all outstanding issues arising from a preliminary and non-public assessment resulting in [REGIONAL ENTITY]’s determination and findings, pursuant to the North American Electric Reliability Corporation (‘NERC’) Rules of Procedure, alleging a violation by [REGISTERED ENTITY] of the NERC Reliability Standard(s) XXX, Requirement(s) RR. ([INSERT NERC VIOLATION ID’S AND REGIONAL VIOLATION ID’S])
2. The Settling Parties acknowledge and agree that this Short Form Settlement Agreement is intended to apply only in the limited circumstances as outlined in NERC Compliance Bulletin 2009-EM-XXX.
3. The Settling Parties further acknowledge and agree that this Settlement Agreement is not binding on [REGIONAL ENTITY], the North American Electric Reliability Corporation [“NERC”], or the Federal Energy Regulatory Commission (Commission) with respect to matters not specifically settled herein. The Settling Parties further acknowledge and agree that should NERC determine that one or more of the required conditions specified in Paragraph 2 above not apply, NERC may reject this Settlement Agreement on that basis.
4. This Settlement Agreement is further subject to the general terms and conditions provided in the attached Addendum A, which are incorporated herein by reference.

**II. Stipulation Regarding Facts And Background Statement**

5. Except as provided in Paragraph 7 of Addendum A, the facts stipulated herein are stipulated solely for the purpose of resolving between [REGISTERED ENTITY] and [REGIONAL ENTITY] the matters discussed herein and do not constitute stipulations or admissions for any other purpose. [REGISTERED ENTITY] and [REGIONAL ENTITY] hereby stipulate and agree to the facts, findings and conclusions provided in the attached Addendum B.



### III. Parties' Separate Representations

#### A. Statement of [REGIONAL ENTITY]

6. [REGIONAL ENTITY] agrees that this Settlement Agreement is in the best interest of the parties and in the best interest of bulk-power system reliability.

#### B. Statement of [REGISTERED ENTITY]

7. (Check one of the following)  
 [REGISTERED ENTITY] admits that the facts set forth and agreed to by the parties for purposes of this Settlement Agreement constitute [a violation] [violations] of \_\_\_\_\_.  
  
 [REGISTERED ENTITY] neither admits nor denies that the facts set forth and agreed to by the parties for purposes of this Settlement Agreement constitute [a violation][violations] of \_\_\_\_\_.
8. [REGISTERED ENTITY] has agreed to enter into this Settlement Agreement with [REGIONAL ENTITY] to avoid extended litigation with respect to the matters described or referred to herein, to avoid uncertainty, and to effectuate a complete and final resolution of the issues set forth herein.
9. [REGISTERED ENTITY] agrees that this Settlement Agreement is in the best interest of the parties and in the best interest of bulk-power system reliability.

#### **IV. Penalty Determination**

10. The Settling Parties stipulate and agree to the penalty determination set forth in Addendum C. The Settling Parties further stipulate and agree for purposes of this Settlement Agreement that the penalty determined and reflected in Addendum C is reasonable in relation to the seriousness of the violation(s) alleged herein and takes into consideration efforts by [REGISTERED ENTITY] to remedy the violation in a timely manner.
11. The Settling Parties further stipulate and agree that the penalty determined and reflected in Addendum C appropriately takes into consideration the factors specified and procedure stipulated in Appendix 4B of the NERC Rules of Procedure, NERC Sanction Guidelines, Sections 3 and 4.
12. In consideration of the terms and conditions of this Settlement Agreement, [REGISTERED ENTITY] hereby waives any objection to the penalty determination set forth in Addendum C and stipulates and agrees to the imposition of the penalty.

#### **V. Penalty Payment**

13. [REGISTERED ENTITY] shall pay a monetary penalty of \$\$\$ to [REGIONAL ENTITY] via [check][wire transfer] within twenty days after receipt of an invoice from [REGIONAL ENTITY] to be issued after this Settlement Agreement has either been approved by the Commission or has become effective by operation of law. [REGIONAL ENTITY] shall notify [REGISTERED ENTITY] and NERC if the payment is not received.

#### **VI. Mitigation Actions and Actions to Prevent Recurrence**

14. The Settling Parties agree that the mitigation actions to achieve compliance with the requirements of the Reliability Standards addressed in this Settlement Agreement, as set forth in the Mitigation Plan attached as Addendum D, have been completed as of \_\_\_\_\_.
15. [REGISTERED ENTITY]'s Mitigation Plan to address the alleged violation(s) set forth in this Settlement Agreement was submitted to [REGIONAL ENTITY] on \_\_\_\_\_. The Mitigation Plan was accepted by [REGIONAL ENTITY] on \_\_\_\_\_ and approved by NERC on \_\_\_\_\_. The Mitigation Plan is identified as MIT-yy-xxxx and was submitted as non-public information to the Commission on [Date] in accordance with Commission orders.
16. [REGISTERED ENTITY] certified on \_\_\_\_\_ that the Mitigation Plan was completed on \_\_\_\_\_. [REGISTERED ENTITY]'s Mitigation Plan, its Certification of Mitigation Plan Completion and the Statement of [REGIONAL

ENTITY] Regarding Completion of Mitigation Plan are included in Addendum D.

17. In addition to the mitigating actions described in the attached Mitigation Plan, [REGISTERED ENTITY] [has implemented][will implement] the following measures to help prevent a recurrence of a similar violation:
  - i. [List actions to prevent recurrence]
18. [REGIONAL ENTITY] has reviewed the preventative measures described in paragraph 17 and has determined that these measures will assist [REGISTERED ENTITY] in improving prospective compliance with the requirements of the Reliability Standard(s) addressed in this Settlement Agreement and will ultimately enhance the reliability of the bulk-power system within an appropriate time-frame.

***Remainder of page intentionally blank.  
Signatures to be affixed to the following page.***

Agreed to and accepted:

---

[NAME]  
[TITLE]  
[REGIONAL ENTITY]

---

Date

---

[NAME]  
[TITLE]  
[REGISTERED ENTITY]

---

Date

## ADDENDUM A

### GENERAL TERMS AND CONDITIONS TO SHORT FORM SETTLEMENT AGREEMENT

1. Failure to make a timely penalty payment or to comply with any of the terms and conditions agreed to herein, or any other conditions of this Settlement Agreement, may subject [REGISTERED ENTITY] to new or additional enforcement, penalty or sanction actions in accordance with the NERC Rules of Procedure.
2. If [REGISTERED ENTITY] does not make the monetary penalty payment above at the times agreed by the parties, interest payable to [REGIONAL ENTITY] will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above.
3. The signatories to the Settlement Agreement agree that they enter into the Settlement Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of [REGIONAL ENTITY] or [REGISTERED ENTITY] has been made to induce the signatories or any other party to enter into the Settlement Agreement.
4. [REGIONAL ENTITY] 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. Based on this review, NERC will either approve the settlement or reject the settlement and notify [REGIONAL ENTITY] and [REGISTERED ENTITY] of changes to the settlement that would result in approval. If NERC rejects the settlement, NERC will provide specific written reasons for such rejection and [REGIONAL ENTITY] will attempt to negotiate a revised settlement agreement with [REGISTERED ENTITY] including any changes to the settlement specified by NERC. If a settlement cannot be reached, the enforcement process shall continue to conclusion. If NERC approves the settlement, NERC will (i) report the approved settlement to the Commission for the Commission's review and approval by order or operation of law and (ii) publicly post this Settlement Agreement.
5. This Settlement Agreement shall become effective upon the Commission's approval of the Settlement Agreement by order or operation of law as submitted to it or as modified in a manner acceptable to the parties.
6. [REGISTERED ENTITY] agrees that this Settlement Agreement, when approved by NERC and the Commission, shall represent a final settlement of all matters set forth herein and [REGISTERED ENTITY] waives its right to further hearings and appeal, unless and only to the extent that [REGISTERED ENTITY] contends that any NERC or Commission action on the Settlement Agreement contains one or more material modifications to the Settlement Agreement. [REGIONAL ENTITY] reserves all rights to initiate enforcement, penalty or sanction actions against [REGISTERED ENTITY] in

accordance with the NERC Rules of Procedure in the event that [REGISTERED ENTITY] fails to comply with the mitigation plan and compliance program agreed to in this Settlement Agreement. In the event [REGISTERED ENTITY] fails to comply with any of the stipulations, remedies, sanctions or additional terms, as set forth in this Settlement Agreement, [REGIONAL ENTITY] will initiate enforcement, penalty, or sanction actions against [REGISTERED ENTITY] to the maximum extent allowed by the NERC Rules of Procedure, up to the maximum statutorily allowed penalty. Except as otherwise specified in this Settlement Agreement, [REGISTERED ENTITY] shall retain all rights to defend against such enforcement actions, also according to the NERC Rules of Procedure.

7. [REGISTERED ENTITY] consents to the use of [REGIONAL ENTITY]'s determinations, findings, and conclusions set forth in this Settlement Agreement for the purpose of assessing the factors, including the factor of determining the [REGISTERED ENTITY]'s history of violations, that are set forth in the May 15, 2008 Revised Policy Statement on Enforcement issued by the Commission,<sup>4</sup> or that may be set forth in any successor policy statement or order. Such use may be in any enforcement action or compliance proceeding undertaken by [REGIONAL ENTITY], NERC or the Commission. Nothing contained in this Settlement Agreement shall be construed as precluding NERC, [REGIONAL ENTITY], or the Commission from considering the matter in question in future proceedings as a repeat violation.
8. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Settlement Agreement on the entity's behalf.
9. The undersigned representative of each party affirms that he or she has read the Settlement Agreement, that all of the matters set forth in the Settlement Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Settlement Agreement is entered into by such party in express reliance on those representations, provided, however, that such affirmation by each party's representative shall not apply to the other party's statements of position set forth in Section III of this Settlement Agreement.
10. The Settlement Agreement may be signed in counterparts.
11. This Settlement Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

---

<sup>4</sup> *Revised Policy Statement on Enforcement*, 123 FERC ¶ 61,221 (2008).

## ADDENDUM B

### STIPULATED FACTS, FINDINGS AND CONCLUSIONS (‘Short Form Settlement Agreement’)

1. Identification of Regional Entity: [REGIONAL ENTITY]
  
2. Identification of the Registered Entity: [REGISTERED ENTITY]
  
3. Description of the Registered Entity.  
[REGISTERED ENTITY] is a XX engaged in XX in [where]. [Include other relevant information, such as nature of business or customers served and location of principal offices]  
  
[Describe facilities owned by the Registered Entity]  
  
[REGISTERED ENTITY] was included on the NERC Compliance Registry on [date] as a [insert function type(s)] and was subject to the requirements of NERC Reliability Standard [insert standards] at the time of the alleged violation.
  
4. Facts and Circumstances Related to the Alleged Violation of [reliability standard 1]:
  - a. Discovery Date: \_\_\_\_\_
  - b. Discovery Method: \_\_\_\_\_
  - c. Duration of Violation: From \_\_\_\_\_ until \_\_\_\_\_, for a total of \_\_\_\_\_ days.
  - d. Brief Description of the Alleged Violation:  
[Describe Regional Entity’s determination of how the Registered Entity failed to meet the requirements of the reliability standard]
  - e. Brief Summary of Regional Entity’s Findings Supporting Its Allegation of a Violation:  
[Describe Regional Entity’s determination of how the Registered Entity failed to meet the requirements of the reliability standard]
  - f. Actual and Foreseeable Impact on Bulk-Power System Reliability:  
[Describe Regional Entity’s determination of the seriousness of the violation and risk to reliability of the violation]
  
5. [REGISTERED ENTITY]’s Statement.  
Sections 5.2 and 8.0 of the NERC Compliance Monitoring and Enforcement Program (CMEP) afford a Registered Entity an opportunity to submit a statement. [INSERT STATEMENT] OR [REGISTERED ENTITY] hereby agrees to waive the opportunity for this statement.

**ADDENDUM C**

**FACTORS CONSIDERED IN DETERMINATION OF PENALTY**  
**(‘Short Form Settlement Agreement’)**

1. Pursuant to Section 4.3 of the Sanction Guidelines, [REGIONAL ENTITY] took into account the following Adjustment Factors (mitigating or aggravating) applicable to the Base Penalty Amount with the accompanying explanation where applicable:

Check if applicable:

Sec. 4.3.1 Repetitive Violation and Compliance History \_\_\_\_\_

\_\_\_\_\_

Sec. 4.3.2 Failure to Comply with Compliance Directive \_\_\_\_\_

\_\_\_\_\_

Sec. 4.3.3 Self-Disclosure and Voluntary Corrective Action \_\_\_\_\_

\_\_\_\_\_

Sec. 4.3.4 Degree and Quality of Cooperation in Violation Investigation and Remedial Action \_\_\_\_\_

\_\_\_\_\_

Sec. 4.3.6 Violation Concealment \_\_\_\_\_

\_\_\_\_\_

Sec. 4.3.7 Intentional Violation \_\_\_\_\_

\_\_\_\_\_

Sec. 4.3.8 Extenuating Circumstances \_\_\_\_\_

\_\_\_\_\_

Other Factors (Including financial ability to pay pursuant to Section 4.4 of the Sanction Guidelines).

\_\_\_\_\_



2. The Final Settled Penalty Amount is:

NERC Violation ID	Reliability Std.	Req. (R)	VRF	VSL	Final Settled Penalty (\$)

3. Relationship of seriousness of the alleged violation and effort by the [REGISTERED ENTITY] to voluntarily remedy the alleged violation: [Summarize severity of violation, actual and foreseeable risk to reliability, and Registered Entity’s efforts to remedy, if applicable.]

**ADDENDUM D**

**D-1: MITIGATION PLAN**

**D-2: CERTIFICATION OF COMPLETION OF MITIGATION PLAN**

**D-3: [REGIONAL ENTITY] VERIFICATION OF MITIGATION PLAN COMPLETION**

BOTCC Meeting  
May 5, 2009

## Board Compliance Committee Discussion of May 2008 Mandate Issues

### Action Required

Approve revised work plan and agree on next steps for mandate issues.

### Status of Issues

The following is a summary of the mandate issues discussed at the committee's February 9, 2009 meeting and their current disposition:

Issue 2.A – Penalty Tool — Committee chairman Paul Barber explained that the written comments on this issue and committee's discussion to date has not led to a uniform direction, and that it would be best to wait until more output from the program was available before advancing the discussion on public release of the Penalty Tool. The committee agreed with the suggestion to put further discussion of the Penalty Tool on hold.

Issue 2.G – Posting Interpretations — Latest version of Issue 2.G (attached) identified several options for addressing the mandate questions:

*“How can NERC give some assurance to the stakeholders regarding risk exposure during compliance audits and the interpretations made therein by the audit team? Should lessons learned and guidance on application of standards discussed by the Regional Compliance Managers be posted for public information?”*

NERC recently has taken steps to address this issue through two initiatives. First, is a comprehensive reworking of the Reliability Standard Audit Worksheets (RSAWs) that is underway. The new versions of the RSAWs will include references to FERC interpretations of standards that appear in FERC orders, specific questions for each year's set of actively monitored standards, and a new common format. Second, NERC has launched an initiative to develop a Knowledge Management System that will include a procedure to accept, review, approve and post in a single searchable site a complete set of compliance guidance information for all registered entities, Regional Entities, and NERC. Given these two initiatives, NERC staff considers this issue satisfactorily addressed from the standpoint of the mandate issue. NERC will continue to report progress to the committee on each of these initiatives.

Issues 1.A, B, C, E, and G – Targeting Compliance Audits — Committee members discussed addressing Issue 1.E mandate question either as a stand alone issue or as part of the family of questions associated with this topic, shown below.

1.A — *“Should the compliance audit program be more targeted?”*

- 1.B — “With respect to standards (i.e., focus only on those standards where the risk to the grid is potentially highest) and/or with respect to registered entities (again, focusing on those entities that pose greater potential risk than others)?”
- 1.C — “If the compliance audit program is more targeted do we need to make greater use of spot checks to verify self-certification?”
- 1.E — “How can the focus on compliance be realigned to devote more effort to serious violations and prevention rather than requiring a significant procedural and paper burden for all violations including minor ones?”
- 1.G — “Should NERC compliance consider dealing in detail (i.e., processing violations through to the penalty stage) with only that subset of its Reliability Standards Requirements that have HIGH VRFs?”

Many of these same questions and issues appeared in the stakeholder comments submitted as part of NERC’s Three-Year Performance Assessment (MRC Agenda Item 8), including how to improve the efficiency and effectiveness of the compliance auditing process (C.8), and ways to process minor violations and those of an administrative nature more rapidly (C.3).

Given that these issues are being addressed as part of the Three-Year Performance Assessment, the committee should consider whether there is value at this time engaging in a parallel review effort.

Excerpts from the discussion of stakeholder comments on these issues as well as proposed specific NERC actions, as they appear in the April 27, 2009, draft assessment, are shown below.

***C.8. Improve the efficiency and effectiveness of the compliance audit process.***

“The ERO Rules of Procedure (Appendix 4C – CMEP, §3.1.4) currently require that all standards that are actively monitored in the current year’s and previous three years’ annual CMEP Implementation Plan are to be audited in a compliance audit. NERC is currently monitoring actively 40 of the 95 approved standards, and not all of the requirements of these standards. (NERC and the Regional Entities must, however, pursue any violations of approved standards that come to their attention, even if the standard is not one that is being actively monitored.) However, NERC will consider the suggestions for making the individual audits less burdensome. NERC is also considering lengthening the amount of on-site time allotted for each audit in order to ensure there is sufficient time for all the standards scheduled to be audited to be covered adequately.”

Specific NERC Actions

- a. NERC will continue to review the results of compliance violation results and Event Analyses to select standards and requirements for active monitoring in order to focus attention on those areas where reliability could be most improved.
- b. NERC will consider splitting the 3-year or 6-year audits into a series of audits that cover fewer standards in each audit but that in the aggregate cover all the required standards within the 3 or 6 year window.
- c. NERC will continue to solicit feedback from registered entities on their audit experience (including through reviewing registered entities' responses to post-audit questionnaire), and consider the information gained and observations from participation by NERC personnel in Regional Entity audits, to identify areas for improvement in audit processes and training auditors.
- d. NERC will consider revising the audit process (as specified in the uniform Compliance Monitoring and Enforcement Program, Appendix 4C to the ERO Rules of Procedure) to provide more time prior to audits to complete RSAWs. Some Regional Entities have already taken this action.

### ***C.3. Process minor violations and those of an administrative nature more rapidly***

Stakeholders commented that NERC needs to ensure that violations of a minor or “administrative” nature are processed more rapidly, and suggested a simple, abbreviated, streamlined process for (i) resolution of self-reported or self-certified non compliances and (ii) processing minor violations (e.g. of documentation or administrative requirements) that have little or no immediate reliability impact (low risk – low severity violations), i.e. a “warning ticket” approach. Stakeholders referenced the NRC’s “non cited violations” approach as a possible solution.

#### Discussion of Comments

NERC has developed a short-form pro forma settlement agreement for lower risk violations and those that are administrative in nature. To date NERC has not received any submissions using this new template.

NERC has considered a “warning ticket” approach, similar to the NRC’s non cited violations, for first time or minor violations, but for the reasons discussed elsewhere in this report, has not utilized the approach at this time.

#### Specific NERC Actions

- a. Continue to offer the short-form pro forma settlement approach for minor violations and those of an administrative nature.
- b. Continue to review the appropriate role for a “warning ticket” process.

## Issue 2.B – Measuring Results of Compliance Program

*“What could the Compliance Program do to better measure and report on reliability improvements achieved as a result of this program?”*

The Member Representatives Committee, as part of its continuing discussion of Priorities and Emphasis for 2009 (MRC Agenda Item 7), will be focusing at its May 5, 2009, meeting on reliability improvement and what feedback from the compliance and event analysis programs could help inform the standards program.

The insights gained from this discussion should help the Board Compliance Committee identify options for its consideration in addressing this mandate issue.

## Issue 3.A – FERC-NERC Relationship

*“NERC can’t be industry’s partner and FERC’s regulatory instrument simultaneously. What should the relationship between NERC and FERC look like?”*

The front section of the draft NERC Three-Year Performance Assessment addresses the issue of “audited self regulation” and the relationship between NERC and FERC. The insights gained from discussion of the draft assessment, both at the MRC meeting and again at the May 18, 2009, workshop, will help the Board Compliance Committee decide whether it needs to engage in any independent discussion of this mandate issue.

## **Attachments**

- a. Compliance Committee Work Plan to Address Issues Related to the NERC Compliance Monitoring and Enforcement Program – Version 5, April 27, 2009 (redline changes to Version 4)
- b. Issue 2.G – Posting Interpretations
- c. Board Compliance Committee Mandate – Questions and Issues Under Development

## **ISSUE 2.G POSTING INTERPRETATIONS**

### **I. ISSUE:**

How can NERC give some assurance to the stakeholders regarding risk exposure during compliance audits and the interpretations made therein by the audit team? Should lessons learned and guidance on application of standards discussed by the Regional Compliance Managers be posted for public information?

Related issues are #1.A., #1.E., #2.E., #2.F., #2.H., #2.J., and #5.F.

### **II. RECOMMENDATION:**

To be Determined - Statement of the action recommended by the BOTCC.

### **III. BACKGROUND:**

While the original question provided in the mandate to the Compliance Committee addresses “interpretations”, it is important to distinguish between the standards interpretation process and providing guidance on what is expected to demonstrate compliance with reliability standards. Discussion on this issue will be focused on providing guidance with regard to the compliance monitoring and enforcement process.

Furthermore, audit teams do not interpret reliability standards. Rather, they assess the specific implementation of the standards by the registered entity. Both the registered entity and the audit team utilizes the RSAWs as the source document for the applicable standards requirements as well as for any additional clarifications to those requirements provided by FERC or Canadian authorities, in their respective standards approvals. Audit teams do “interpret” the “sufficiency of evidence” that demonstrates compliance.

There are currently several documents and resources available to entities to assist in understanding the reliability standards and to provide guidance on what will be required to show compliance with the standards.

#### Guidance Documents

Guidance documents are developed by NERC staff and vetted with NERC and Regional staff. The purpose of these documents is to clarify implementation and enforcement issues and provide overall guidance on what is expected of registered entities. These documents are not approved by FERC or the NERC Board of Trustees. The attached “Guidance for Enforcement of CIP Standards” is an example of such a document.

## Standards Q&A Report

This report, posted on the NERC website, provides responses to stakeholder questions on standards or compliance issues. Responses are developed by NERC staff with a goal of posting periodic updates. Workload has restricted periodic postings to an annual basis.

## Reliability Standard Audit Worksheets

The Reliability Standard Audit Worksheets for approved standards are posted on the NERC website. These worksheets are continuously being improved to incorporate specific information including: NERC Guidance, Regional Entity compliance manager consensus, and excerpts from FERC Orders regarding Reliability Standards and requirements. Going forward, the current plan is to combine the Reliability Standard Audit Worksheet and pre-audit questionnaire into one document per Reliability Standard. This new document will be publicly available to the industry.

## Formal Standards Interpretation

The NERC Reliability Standards Development Procedure, approved by the NERC Board of Trustees, includes a process for obtaining a formal interpretation to a reliability standard. Located in the "Special Procedures" section, the interpretation process includes assembling a team of subject experts to address the issue, drafting of a written interpretation, industry balloting, and approval by the NERC Board and appropriate regulatory authorities.

## **IV. OPTIONS AND ANALYSIS:**

**Option 1:** Continue to develop guidance documents, standards Q&A reports, reliability standard audit worksheets (RSAWs), and formal standards interpretations as done today. Do not post the results of discussions by Regional Compliance Managers on interpretation issues. **[Status Quo]**

Pros –

Continuing the formal standards interpretation process has the advantage of assembling teams of subject matter experts, posting and balloting formal interpretations to assure industry agreement, and provides a transparent process. **This aspect is common to all options.**

The development of RSAWs with pertinent reference information can provide an extremely important reference for registered entities and compliance auditors in support of consistent enforcement.



Cons –

The current RSAW update process may not be perceived as timely or providing enough information.

Guidance documents may materially change the substance of key aspects of the performance requirements as approved by the standards development process. As such, these documents need to be carefully developed and an appropriate approval process considered.

**Option 2:** Enhance the reliability standard audit worksheets to include a section that provides examples of what constitutes acceptable evidence of compliance with the standard. The information contained in this section of the reliability standard audit worksheet might come from earlier guidance documents, historical audit results, discussions by the Regional Compliance Managers, and prior FERC orders. Continue to develop formal standards interpretations as done today.

Pros –

This option provides timely and complete RSAWs for use by registered entities. This will provide more complete guidance to internal compliance activities, improved clarity on how to reach and maintain compliance, and improve consistency of the results between audit teams.

This option makes public the results of Regional Compliance Manager discussions on what constitutes sufficient evidence to demonstrate compliance.

Cons –

Guidance documents may materially change the substance of key aspects of the performance requirements as approved by the standards development process. As such, these documents need to be carefully developed and an appropriate approval process considered.

**Option 3:** Develop a procedure to accept, review, and post, at a single location, a searchable set of compliance guidance. Two sources for this guidance are the results from meetings of the Regional Compliance Managers and responses to requests for guidance that come in to the Regions or NERC (separate from formal standards interpretations). Continue to develop reliability standard audit worksheets and formal standards interpretations as done

today. This option requires combining current efforts underway within the Regional Entities and NERC, and the posting results in a single location.

Pros –

Promotes greater transparency and a clear understanding of what it takes to comply with the reliability standards, and will result lead registered entities to faster, more consistent and effective efforts to reach and maintain compliance. When appropriate, examples of what **does not** constitute demonstration of compliance can be posted.

This option would provide a systematic approach to resolving questions and providing guidance on approaches to compliance. It avoids answering the same question multiple times in multiple forums. Posting results provides a readily accessible (and easily searchable) database to improve efficiency.

This option makes public the results of Regional Compliance Manager discussions on what constitutes sufficient evidence to demonstrate compliance.

This option would eliminate the need to provide the existing annual (or more frequent) Q&A update.

The actions taken in Option 2 could be combined with this option [new option #4?] to provide timely and complete RSAWs for use by registered entities. This will provide more complete guidance to internal compliance activities and improve consistency of the results between audit teams.

Cons –

Will require additional dedicated staff resources for the effort to be comprehensive enough to be useful to users, owners, and operators.

Does not improve the current development of RAWs.

Guidance documents may materially change the substance of key aspects of the performance requirements as approved by the standards development process. As such, these documents need to be carefully developed and an appropriate approval process considered.

---

# **Compliance Committee Work Plan to Address Issues Related to the NERC Compliance Monitoring and Enforcement Program**

Version 5  
April 27, 2009

1

---

# Table of Contents

---

Introduction.....	3
Purpose.....	3
Background.....	3
Work Plan Strategy.....	4
Issues to be Addressed by the Board of Trustees Compliance Committee .....	4
Review the Prioritization of Effort Within the Compliance Program .....	5
Review the Compliance Process to Achieve Greater Efficiency, Clarity, Consistency, and Effectiveness.....	7
Reexamine NERC’s Relationship with FERC Regarding the Compliance Program.....	10
Review Overall Stakeholder Participation in the Compliance Process .....	10
Review the Relationship Between NERC and the Regional Entities on the Execution of the Compliance Program .....	11
Suggestions for Additional Issues .....	12
Schedule for Completion .....	12
Deliverables .....	13

Version 5  
April 27, 2009

---

# Introduction

---

## Purpose

The *Compliance Committee Work Plan to Address Issues Related to the NERC Compliance Monitoring and Enforcement Program* establishes an approach to address issues raised regarding the NERC Compliance Monitoring and Enforcement Program after its first full year of operation with mandatory and enforceable reliability standards in the United States. The work plan also serves to communicate to the industry participants and governmental authorities to whom NERC is accountable as the ERO how the issues will be prioritized and ultimately considered by the Compliance Committee. This work plan will require continuous input and support by the users, owners, and operators of the bulk power system, the approved Regional Entities, NERC staff, and in some cases governmental authorities.

## Background

Following the May, 2008 NERC Board of Trustees meeting, three Board committees were tasked with reviewing the policies, procedures, and priorities within three NERC program areas. The Compliance Committee was tasked with reviewing the policies, procedures, and priorities within the compliance program. To jump start the work of the Board committees, NERC staff collected suggestions of policy, procedure, and process **questions** that are important for the committees to address. That initial request to provide input on suggested questions went to the Board of Trustees and the Regional Entity executives. Each committee was expected to consider this initial input and to seek other input as it deemed necessary to fully address their appointed program area.

The questions submitted on compliance issues were initially grouped into five areas for consideration by the Compliance Committee. The questions were not organized with the five groups in any particular manner, instead leaving that to the work of the committee. The five areas are:

1. Review the prioritization of effort within the Compliance Program;
2. Review the compliance process to achieve greater efficiency, clarity, consistency, and effectiveness;
3. Reexamine NERC's relationship with FERC regarding the Compliance Program;
4. Review overall stakeholder participation in the compliance process; and
5. Review the relationship between NERC and the Regional Entities on the execution of the Compliance Program.

Version 5  
April 27, 2009

---

## **Work Plan Strategy**

The work plan has been designed to allow for a structured and logical approach to address the issues identified given limited resources of the Compliance Committee, NERC's staff, and the Regional Entities' staffs to complete the review and implementation of outcomes from this work plan.

This structure allows the establishment of priorities by the committee based on broad categories of issues which are further divided among three general classifications based on the time frame by which an outcome could be realized and an issue resolved. These classifications include:

**Short Term** - Actions the Compliance Committee could resolve before the end of 2008 [Comment: given the pace, the issues identified as short term may stretch into Q2'09.] by collecting necessary information and rendering a decision. These decisions would not require Rules of Procedure changes or other regulatory actions and can be accomplished quickly within the current framework.

**Medium Term** – Actions the Compliance Committee could resolve in the next calendar year. These actions would likely require collection of empirical data or other information from the appropriate source before developing a resolution or action to be taken. These actions must allow sufficient time for support staff and the Compliance Committee to collect, analyze and act upon the data or information and may require the development of new processes or procedures. In some cases close coordination with the appropriate regulatory bodies or governmental authorities may be necessary.

**Long Term** – These are issues that will likely require a regulatory filing or a change to the Rules of Procedure and may require a significant amount of data to be collected or metrics developed prior to taking action. Collection of sufficient data and information to determine proposed changes to the Rules of Procedure and implementing those changes, including posting and comment periods as required by the Rules of Procedure, would be necessary and may take a year or longer to reach resolution or fully address and implement any recommended actions.

## **Issues to be Addressed by the Board of Trustees Compliance Committee**

The following issues were identified through the comment period following the May 2008 NERC Board of Trustees meeting and assigned for review by the NERC Compliance Committee. These issues are organized into the broad categories initially suggested when the policy, procedure and process questions were collected and further organized based on similar subjects within those categories as part of the Compliance Committee's work. In a number of cases, initiatives have been undertaken within NERC that either attempt to address the issue or may be related to any resolution of the issue. To assist the Compliance Committee in its discussions on each area, current activities underway at NERC are listed with each grouping of issues.

Version 5  
April 27, 2009

---

## Issue 1 - Review the Prioritization of Effort Within the Compliance Program

In doing so, the Compliance Committee should consider the following:

### Short Term:

- A. Should the compliance audit program be more targeted?
- B. Should the compliance program be more targeted with respect to standards (i.e., focus only on those standards where the risk to the grid is potentially highest) and/or with respect to registered entities (again, focusing on those entities that pose greater potential risk than others)?
- C. If the compliance audit program is more targeted should NERC make greater use of spot checks to verify self-certification?
- D. Should some entities have a more frequent audit cycle than others?

### Current State:

NERC recently issued a draft list of actively monitored standards for 2009 to the Regional Entities for consideration. This list is based on an initial “risk based” approach to evaluate those standards that should be subject to self-certification and review during compliance audits. This list for active monitoring now specifically identifies requirements in the Reliability Standards that if violated pose the most risk to the BPS. Factors used to determine the list of actively monitored Reliability Standards/Requirements include: Violation Risk Factor, Critical Infrastructure Protection, past industry performance, and past audited entity performance.

The NERC Rules of Procedure require audits of those entities with the primary reliability responsibility (reliability coordinators, balancing authorities, and transmission operators) on a three year basis and for remaining entities on a schedule established by NERC and the regions. The other entities are currently scheduled to be audited on a six year cycle. NERC is only one year into the program and changes to the Rules of Procedure will require a longer term effort. These requirements are minimum requirements and audits can occur if NERC or the Regional Entity identifies a need for an unscheduled audit.

Generally, there is support for efforts taken to maintain reasonable workloads for all parties involved in carrying out the CMEP while ensuring that issues with higher risks are addressed. In addition, there is support for targeting higher risk standards and increasing the use of audits and/or spot checks as appropriate.

Version 5  
April 27, 2009

---

Medium Term:

- E. How can the focus on compliance be realigned to devote more effort to serious violations and prevention rather than requiring a significant procedural and paper burden for all violations including minor ones?

Current State:

NERC and the Regional Entities are working on a process and supporting documents to facilitate the issuance of a pro-forma “short-form” or “standardized” settlement agreement for violations determined to be minor in nature, non-repetitive, and not recurring in an organization. The process would facilitate the ability of NERC and the Regional Entities to issue the pro-forma settlement to the entity at the time the violation was discovered. Such an approach will allow processing for a qualifying violation: (i) in as timely a manner as possible; (ii) with sanctioning determined from a more pre-defined penalty range, and; (iii) with less significant paper or negotiation activity burden on the entity and NERC or the Regional Entity. The entity would still have the opportunity to decline this arrangement in favor of having the violation(s) in question addressed through the conventional non-settlement CMEP process route allowing for full due process. Identification of the information that should be collected to verify the effectiveness of these actions will be important to this on-going activity.

There is support for reducing the documentation requirements for stakeholders where the documentation is for less serious violations. This is one potential use of a “short-form” or “standardized” settlement form.

Long Term:

- F. Is three years the right audit cycle for all?
- G. Should NERC compliance consider dealing in detail (i.e., processing violations through to the penalty stage) with only that subset of its Reliability Standards Requirements that have HIGH VRFs?

Current State:

The NERC Rules of Procedure currently approved by FERC require audits of those entities with the primary reliability responsibility (reliability coordinators, balancing authorities, and transmission operators) on a three year basis and for other entities on a schedule established by NERC and the regions. The other entities are currently scheduled to be audited on a six year cycle. NERC and the industry are only one year into the enforceable program with far less than one full cycle completed. Changes to the Rules of Procedure will require a longer term effort.

Collection of data and the development of metrics will provide the necessary basis for demonstrating the most effective audit cycle structure and duration.

Version 5  
April 27, 2009



---

## Issue 2 - Review the Compliance Process to Achieve Greater Efficiency, Clarity, Consistency, and Effectiveness

In doing so, the Compliance Committee should consider the following:

### Short Term:

- A. Should NERC make public the Penalty Tool?

#### Current State:

***This issue is currently being addressed by the Compliance Committee.***

- B. What could the Compliance Program do to better measure and report on reliability improvements achieved as a result of this program?

#### Current State:

NERC Compliance, Event Analysis, and Reliability Metrics staff develop and post reliability performance information. Additional metrics, along with associated benchmarks, are being developed in cooperation with the Reliability Metrics Working Group.

- C. Do we have appropriate feedback processes from compliance to standards development?

#### Current State:

NERC reorganized the compliance department this year to add a focus on Compliance Interfaces including the interface with standards development. Additionally, the Regional Entity compliance managers are working to provide feedback and as an example have requested a formal interpretation of a Reliability Standard this year based on actual field experience in its application. Such feedback will continue moving forward.

- D. We recognize the logic of using compliance experience to enhance standards but how do we ensure that appropriate information actually flows and gets acted on?

#### Current State:

NERC utilizes feedback provided by its Regional Coordinators, who either participate directly or serve as observers on compliance audits conducted by Regional Entities, and provides this information to the Standards Development staff at NERC.

The NERC CCC has established a subcommittee to work directly with the Standards Committee to assist the Standards Committee in developing compliance administration elements to be included in the standards. The CCC has attempted to develop a resource pool of individuals to assist with developing compliance administration elements, however the identification of members with the necessary skills and time available for the pool has been challenging.

Version 5  
April 27, 2009

---

Medium Term:

- E. How can NERC ensure consistency of compliance enforcement across North America?
- F. Should the regions and NERC bring any differences in audit and compliance assessment methodologies for each standard to the BOT CC for resolution in order to ensure uniform application of all standards in all regions?
- G. How can NERC give some assurance to the stakeholders regarding risk exposure during compliance audits and the interpretations made therein by the audit team?

Current State:

***This issue is currently being addressed by the Compliance Committee.***

From the perspective of the CCC, any difference in methodologies between Regions should be identified to the BOT CC and the CCC. At the direction of the BOT CC, the CCC will review and provide input on any differences.

- H. Measures are intended to allow the responsible entity the latitude to use a variety of methods to demonstrate compliance. How do we ensure that the Regional Entities (and NERC Compliance) are not demanding a specific set of evidence to be produced to demonstrate compliance and ignoring other evidence that was allowed by the original measure?

Current State:

NERC provides required auditor training to all audit team members to assure consistency with the Government Accountability Office (GAO) Generally Accepted Government Auditing Standards (GAGAS) and The Institute of Internal Auditors standards. This year NERC deployed a new training module titled *Gathering Quality Evidence* that emphasizes how an auditor determines if evidence is adequate and how to corroborate the evidence via interviews and other means. Auditing is a defined practice and there is no requirement established in any of the audit training materials that suggest a single set of evidence is all that is acceptable.

NERC currently provides and makes public Reliability Standard Audit Worksheets (RSAW) that contain some level of guidance for compliance audits and types of evidence that may be appropriate to demonstrate compliance with the reliability standards. These can be found at [http://www.nerc.com/~comply/auditor\\_resources.html](http://www.nerc.com/~comply/auditor_resources.html). These worksheets are currently evaluated by the standards group at NERC to ensure that the worksheets themselves do not interpret the standard itself. When NERC becomes aware of a discrepancy in application of the standards the RSAW for that particular standard is modified to provide additional clarity. This most recently occurred for CIP-001, Requirement 4.

Version 5  
April 27, 2009

---

The Regional Entity Compliance Managers discuss issues among the regional programs and has formed an Audit Observation Team to highlight, discuss, and resolve issues identified in the audit process. Results of these meetings can result in revised RSAWs for the appropriate reliability standards.

- I. Should procedures used by the Regional Entities to implement delegated activities be approved by the appropriate NERC board committee? (An example here is the WECC process developed separately for disputes of registration issues. WECC is the only region with a separate dispute process for registration matters. While standards processes are required to be approved in the delegation agreement, other processes may exist that have not been reviewed or approved by the ERO.) A related question is whether the NERC Board Compliance Committee should at least provide an oversight role for the dispute resolution process.
- J. What policies can NERC adopt to ensure the compliance program is clear, stable, predictable, and transparent with respect to process and outcomes – even the public whom we are protecting would expect nothing less in the execution of compliance monitoring and enforcement?

Current State:

NERC currently provides publicly available information including: NERC Rules of Procedure, Compliance Monitoring and Enforcement Program, Sanction Guidelines, Notices of Penalty, Settlement Agreements, annual implementation plan, audit schedule, and annual CMEP report along with open reports to the board of trustees.

Recent improvements to transparency include: posting the audit report status on the consolidated audit schedule for the period of 2007 through the present along with completed audit reports of registered entities; including more information on the Reliability Standard Audit Worksheets as described above; posting guidance on the CIP-002 through CIP-009 compliance efforts; posting draft documents for 30-day public comment. These include the *NERC Statement of Compliance Registry Criteria* and the draft 2009 CMEP Implementation Plan.

Long Term:

- K. Should NERC adopt a policy to emulate the FERC's process, as articulated in their latest sanctioning policy, regarding the initiation of settlement arrangements? Specifically, as articulated in Section 2(d) paragraph 34 of that policy, before initiating settlements should the REs be allowed to solicit BOT CC "pre-approval" to negotiate within a potential penalty range? This could be done within the current RDAs where the REs would not be "required" to do this (i.e., they keep their current RDA authority to go it alone); however, they would run the risk of the BOT CC rejecting settlement amounts that were not so pre-approved.

Version 5  
April 27, 2009

- 
- L. Should the Regional Entity staff be allowed to appeal the decision of a regional hearing body (jury of peers for the registered entity) to NERC if they believe the regional hearing body did not act appropriately?

### **Issue 3 - Reexamine NERC's Relationship with FERC Regarding the Compliance Program**

In doing so, the Compliance Committee should consider the following:

#### Medium Term:

- A. NERC can't be industry's partner and FERC's regulatory instrument simultaneously. What should the relationship between NERC and FERC look like?

### **Issue 4 - Review Overall Stakeholder Participation in the Compliance Process**

In doing so, the Compliance Committee should consider the following:

#### Short Term:

- A. Is NERC taking full advantage of the expertise on the Compliance and Certification Committee?

#### Current State:

As part of the CCC charter and in anticipation of the compliance program efforts, the CCC has written and approved procedures for violation hearings, certification hearings, and mediation proceedings. These procedures have not yet been approved by the Board of Trustees. In addition, the CCC recognizes their responsibility to provide oversight and feedback from the stakeholder community in a strategic and concise format. The committee has written and approved procedures offering oversight on NERC's adherence to reliability standards, NERC's adherence to the standards development process, and NERC's adherence to the CMEP. The CCC and subcommittees have, and will, continue to work with guidance from NERC compliance staff and NERC counsel to systematically identify key performance indicators and provide critical feedback from the stakeholder community, thus optimizing the compliance program efforts.

From the perspective of the CCC, the committee is presently engaged to the proper extent and is willing to assist the BOT CC on matters that the BOT CC deems appropriate. One example could be preliminary hearings of Registration similar to the CCC's certification hearing responsibilities.

Version 5  
April 27, 2009

---

## **Issue 5 - Review the Relationship Between NERC and the Regional Entities on the Execution of the Compliance Program**

In doing so, the Compliance Committee should consider the following:

### Short Term:

- A. In addition to the CCC, the Member Representatives Committee (MRC) should be used for expressing industry's concerns.
- B. Regional Managers in their role as head of the delegated authority for NERC's statutory activities should not be representing Members' concerns about overall budget levels or increases; they should be pushing back in the areas of common interest where they believe that the balance between Regional Entity and NERC efforts is wrong.
- C. Should the NERC board approve the scope and other provisions of the Regional Entity Management Group and its various subcommittees as part of the ERO?

### Medium Term:

- D. How should NERC balance its role in compliance with regard to the need to partner with the Regional Entities in executing the compliance program versus providing oversight at arm's length? (The emphasis thus far appears to be the latter, which is manifested in what is sensed to be an underlying distrust that the regions are effectively performing their compliance responsibilities.)
- E. Should the NERC Board Compliance Committee and NERC staff shift from duplicate review and approval of all compliance actions and mitigation plans toward a process that provides deference (through consent approval) to the regional compliance authority on the majority of cases and focuses at the NERC level on the most significant cases that are needed to set precedents and guide consistency?

### Long Term:

- F. Can the program achieve consistency and efficiency with independent governance of the Regions?
- G. An abiding concern is the lack of independent governance for the regions. To varying degrees the Regional Managers are answerable more to their stakeholder Boards than to the mandates of their delegation agreements. This has not been a problem yet in the enforcement arena (and may not be in the future) but it shows itself in the budget process.

#### Current State:

Section 2 of the CCC charter addresses this issue in part, and provides for various activities related to the perception of the policies, practices, and effectiveness of the Compliance

**Version 5**  
**April 27, 2009**

---

Program. The CCC is developing a program for on-going monitoring of stakeholders perceptions.

### **Suggestions for Additional Issues**

Comments received on version 3 of the work plan included possible additional issues that the Compliance Committee may want to consider. These suggestions are included here for possible inclusion in the work plan at a future date.

1. NERC should allow stakeholders to make recommendations in the planning and design of the compliance enforcement program.
2. NERC should consider before-the-fact processes to balance its after-the-fact compliance efforts.
3. NERC needs to clarify the role of the compliance enforcement program with other NERC programs and activities.

### **Schedule for Completion**

Develop first draft of work plan	July 17
Develop draft issue summaries for Issue 2.A. and 2.G.	September 10
Post issue summaries and work plan for comment	September 25
Post revised issue summaries, first draft of prioritization for remaining issues, and work plan for discussion at October 28 meeting	October 21
Compliance Committee meeting <ul style="list-style-type: none"><li>- review comments on first set of issue summaries</li><li>- reach conclusion on first set of issues</li><li>- review prioritization and direct next issues development</li></ul>	October 28
Compliance Committee meeting <ul style="list-style-type: none"><li>- review mandate work plan and priorities</li><li>- establish new priorities</li></ul>	February 2009
Compliance Committee meeting	May 2009

**Version 5**  
**April 27, 2009**

- 
- review revised mandate work plan
  - discuss relationship of mandate issues with NERC recommendations for improvement in draft 3-year performance assessment and decide which issues need policy guidance from the committee

Compliance Committee meeting

August 2009

- review draft issue summaries for remaining policy issues to be addressed by the committee

Complete work on all policy issues

December, 2009

### **Deliverables**

Completed issue summaries.

Report on conclusions reached.

Version 5  
April 27, 2009

13

## **Board Compliance Committee Mandate Questions and Issues Under Development**

### **Penalty Tool**

2.A. Should NERC make public the Penalty Tool?

### **Posting Interpretations**

2.G. How can NERC give some assurance to the stakeholders regarding risk exposure during compliance audits and the interpretations made therein by the audit team?

### **Remaining Questions and Issues**

The remaining questions are listed in priority order based on how their resolution supports one or more attributes of the compliance program. These attributes are: Effectiveness (**E**), Transparency (**T**), Consistency (**C**), Efficiency (**Ey**), and Oversight (**O**). Where possible, similar questions have been grouped together under a common issue statement.

#### **I. Balance Between NERC and the Regional Entities (E, C, Ey, O)**

5.D. How should NERC balance its role in compliance with regard to the need to partner with the Regional Entities in executing the compliance program versus providing oversight at arm's length? (The emphasis thus far appears to be the latter, which is manifested in what is sensed to be an underlying distrust that the regions are effectively performing their compliance responsibilities.)

5.E. Should the NERC Board Compliance Committee and NERC staff shift from duplicate review and approval of all compliance actions and mitigation plans toward a process that provides deference (through consent approval) to the regional compliance authority on the majority of cases and focuses at the NERC level on the most significant cases that are needed to set precedents and guide consistency?

#### **II. Targeting Compliance Audits (E, Ey, O)**

1.A. Should the compliance audit program be more targeted?

1.B. With respect to standards (i.e., focus only on those standards where the risk to the grid is potentially highest) and/or with respect to registered entities (again, focusing on those entities that pose greater potential risk than others)?

1.C. If the compliance audit program is more targeted do we need to make greater use of spot checks to verify self-certification?



1.E. How can the focus on compliance be realigned to devote more effort to serious violations and prevention rather than requiring a significant procedural and paper burden for all violations including minor ones?

1.G. Should NERC compliance consider dealing in detail (i.e., processing violations through to the penalty stage) with only that subset of its Reliability Standards Requirements that have HIGH VRFs?

### **III. Audit Cycle (E, Ey, O)**

1.D. Should some entities have a more frequent audit cycle than others?

1.F. Is three years the right audit cycle for all?

### **IV. Consistency (E, C, Ey)**

2.E. How can NERC ensure consistency of compliance enforcement across North America?

2.F. Should the regions and NERC bring any differences in audit and compliance assessment methodologies for each standard to the BOT CC for resolution in order to ensure uniform application of all standards in all regions?

5.F. Can the program achieve consistency and efficiency with independent governance of the Regions?

### **V. Measuring Results of Compliance Program (E, T)**

2.B. What could the Compliance Program do to better measure and report on reliability improvements achieved as a result of this program?

### **VI. Feedback from Compliance to Standards (E, C)**

2.C. Do we have appropriate feedback processes from compliance to standards development?

2.D. We recognize the logic of using compliance experience to enhance standards but how do we ensure that appropriate information actually flows and gets acted on?

### **VII. Demonstrating Compliance (T, Ey)**

2.H. Measures are intended to allow the responsible entity the latitude to use a variety of methods to demonstrate compliance. How do we ensure that the Regional Entities (and NERC Compliance) are not demanding a specific set of evidence be produced to demonstrate compliance and ignoring other evidence that was allowed by the original measure?

## **VIII. Policies for Clarity and Transparency (T, Ey)**

2.J. What policies can NERC adopt to ensure the compliance program is clear, stable, predictable, and transparent with respect to process and outcomes – even the public whom we are protecting would expect nothing less in the execution of compliance monitoring and enforcement?

## **IX. Appeals (T, Ey)**

2.L. Should the Regional Entity staff be allowed to appeal the decision of a regional hearing body (jury of peers for the registered entity) to NERC if they believe the regional hearing body did not act appropriately?

## **X. FERC-NERC Relationship (E, O)**

3.A. NERC can't be industry's partner and FERC's regulatory instrument simultaneously. What should the relationship between NERC and FERC look like?

## **XI. Role of CCC (E, Ey)**

4.A. Is NERC taking full advantage of the expertise on the Compliance and Certification Committee?

## **XII. Regional Processes (C)**

2.I. Should procedures used by the Regional Entities to implement delegated activities be approved by the appropriate NERC board committee? (An example here is the WECC process developed separately for disputes of registration issues. WECC is the only region with a separate dispute process for registration matters. While standards processes are required to be approved in the delegation agreement, other processes may exist that have not been reviewed or approved by the ERO.)

## **XIII. Settlements (Ey)**

2.K. Should NERC adopt a policy to emulate the FERC's process, as articulated in their latest sanctioning policy, regarding the initiation of settlement arrangements? Specifically, as articulated in Section 2(d) paragraph 34 of that policy, before initiating settlements should the REs be allowed to solicit BOT CC "pre-approval" to negotiate within a potential penalty range? This could be done within the current RDAs where the REs would not be "required" to do this (i.e., they keep their current RDA authority to go it alone); however, they would run risk of the BOT CC rejecting settlement amounts that were not so preapproved.